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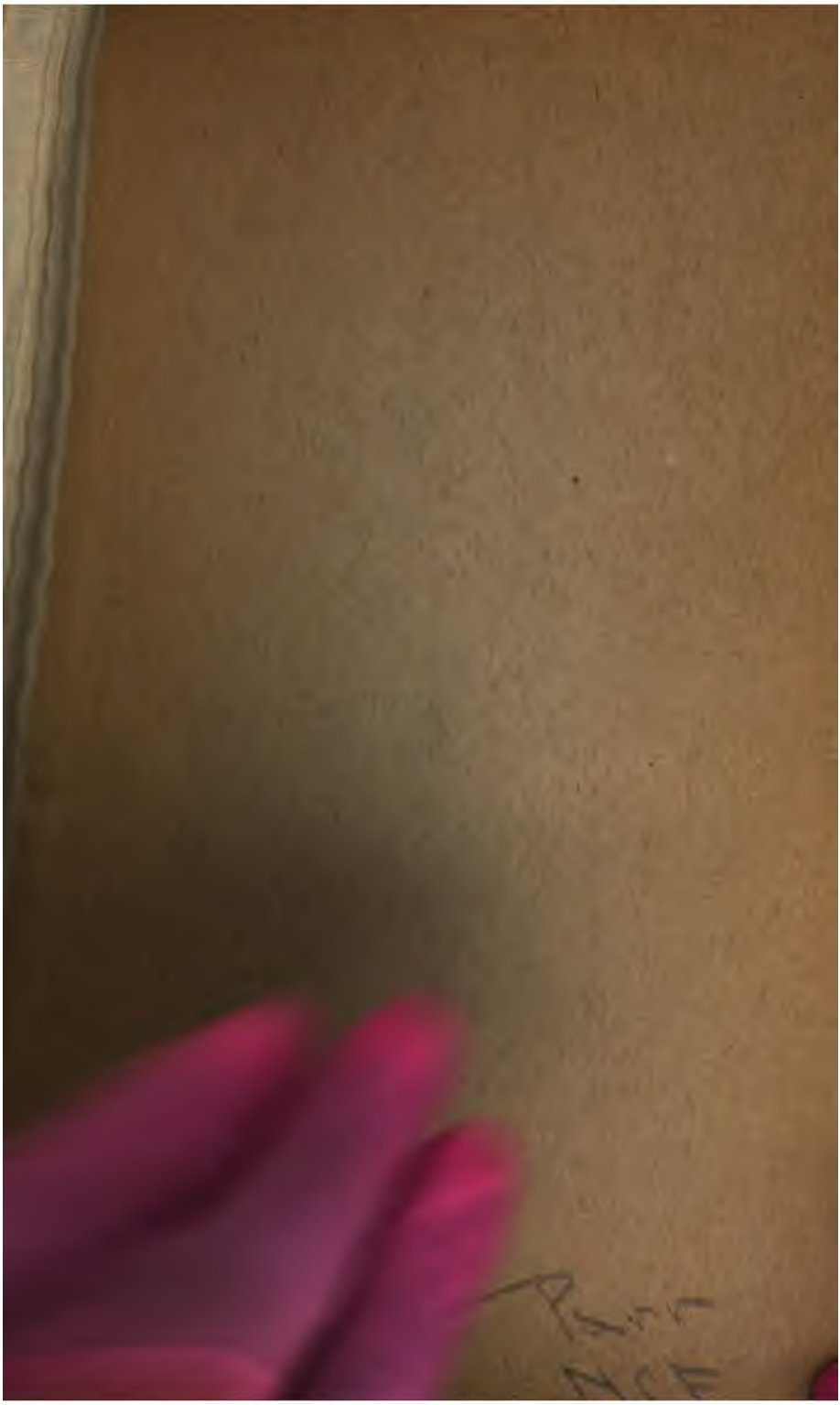

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THE

WORKS

OF

SAMUEL PARR, LL.D.

PREBENDARY OF ST. PAUL'S, CURATE OF HATTON, &c.

WITH

MEMOIRS OF HIS LIFE AND WRITINGS,

AND

A SELECTION FROM HIS CORRESPONDENCE,

BY

JOHN JOHNSTONE, M. D.

FELLOW OF THE ROYAL SOCIETY, AND OF THE ROYAL COLLEGE OF PHYSICIANS OF LONDON, &c.

IN EIGHT VOLUMES.

VOL. IV.

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CHARACTER

OF

CHARLES JAMES FOX,

BY

PHILOPATRIS VARVICENSIS.

ADVERTISEMENT.

It was thought needless to reprint the Characters of Mr. Fox, which Dr. Parr selected from newspapers and other publications, as, though interesting in themselves, they did not belong to him. All that was actually written by himself, and published under the name of Philopatris Varvicensis, is here reprinted, excepting only the Character of Mr. Fox in Latin, which will be found in the Preface to Bellendenus, and the Discussion on a *μιαρόν τι καὶ ἄῤῥητον βδέλυγμα*, in the omission of which it is conceived a sound discretion has been exercised. The punishment proposed for that particular offence, is an inimitable specimen of the bonhomie and almost childlike simplicity of our venerable friend—verbum non amplius. The long note on Law, though too long, too much elaborated, and too much illustrated, comprises so many excellencies peculiar to Dr. Parr's mode of thinking, and mode of writing, that it alone will sanction the republication of the Philopatris to every English reader.

TO

THOMAS WILLIAM COKE, ESQ.

THE PERSONAL AND POLITICAL FRIEND

OF THE LATE

CHARLES JAMES FOX,

THE FAITHFUL AND INDEPENDENT REPRESENTATIVE

OF THE COUNTY OF NORFOLK,

THE JUDICIOUS AND MUNIFICENT PROMOTER

OF AGRICULTURAL IMPROVEMENTS,

THE STEADY GUARDIAN OF CONSTITUTIONAL FREEDOM,

THE RESOLUTE OPPOSER

OF INTOLERANCE, CORRUPTION, AND UNNECESSARY WAR;

A GENTLEMAN IN HIS MANNERS AND SPIRIT,

AND

A CHRISTIAN IN FAITH AND PRACTICE,

THE FOLLOWING PAGES

ARE MOST RESPECTFULLY DEDICATED,

BY HIS SINCERE WELL-WISHER,

AND MUCH-OBLIGED HUMBLE SERVANT,

THE EDITOR.

ORIGINAL PREFACE.

It was thought by some friends of Mr. Fox that a collection of the best written Characters* which had been drawn of him soon after his death, would not be unacceptable to the public. Those which are here presented to the reader have been selected from many others with the utmost impartiality. They were written by men of different parties, and perhaps even to distant generations they will not be wholly uninteresting, by the views which they exhibit of Mr. Fox's merits or demerits, as they were estimated by some of his intelligent contemporaries.

The Editor has exercised his own judgment in republishing the whole, or what appeared to him the more important parts, of the articles which he found in newspapers, in periodical works, in sermons, and even in poems, where the name of Mr. Fox was incidentally introduced. Remembering the ingenuous and artless mind of Mr. Fox himself, the Editor has excluded some complimentary statements, which, upon careful enquiry, he had reason to believe unsupported by facts. He thought it his duty to incorporate frequent com-

* Vide Advertisement, p. 3.

mendations of Mr. Pitt. He has not refused admission to many censures upon Mr. Fox. But he has rejected all coarse and acrimonious invectives, because he was convinced that they would be disgusting alike to the warm admirers and the honourable opponents of that illustrious statesman. He supposes that, by anonymous writers, no offence will be taken at his endeavours to give additional notoriety to compositions, the selection of which is a proof that his own mind was not unfavourably impressed with the propriety of the matter, or the graces of the style. He trusts too that his excellent friends Dr. Symmons and Mr. Belsham will excuse him for having made some extracts from judicious and elegant discourses which they delivered from the pulpit, and afterwards committed to the press.

The character of Mr. Fox which some years ago appeared in the Preface to Bellendenus de Statu, is inserted with the permission of the author, and the same person is to be considered as the writer both of the Letter and the Notes which are placed at the conclusion of the work. Having separated several quotations from classical authors, and several remarks upon Mr. Fox himself, from the text of that Letter, and having thrown them into Notes, the writer did not choose to disturb the epistolary form in which they had been originally prepared; and, for the sake of consistency, he preserved the same form in all the additional Notes.

It is unnecessary to state, that his observations upon our Penal Code were suggested to him by

the remembrance of a most serious, and, in truth, nearly the last conversation which passed between himself and Mr. Fox; and upon this circumstance he would rest his apology for submitting them, on the present occasion, to the consideration of the public. As he had expressed some of his expectations upon the probable merit of Mr. Fox's History in the earlier part of his Notes, and before the appearance of the work itself, he could not with propriety be quite silent when that History had seen the light, and when it was in his power to form a more correct opinion of its excellencies and its faults. He is aware that some controversial discussions, which in justice to Mr. Fox's memory he could not avoid, will be interesting chiefly to ecclesiastical readers. But it should not be forgotten that among them will be found many persons of learning, sense, and virtue, to whose esteem Mr. Fox, if he were living, would not be indifferent, and to whose judgment therefore is more particularly addressed the vindication of Mr. Fox's principles from the severe charges brought against them in a periodical work, which has, and deserves to have, a very extensive circulation, and a very favourable reception, among the teachers of the Established Church.

As to the Notes, which in number and in size have imperceptibly grown far beyond the original expectation of the Editor, he must content himself with stating, that the additional ones suggested themselves to his mind when he was gathering a rank and huge bundle of errata in the sheets

printed off; that the matter contained in them, and the precedings ones, relates to subjects which he thinks important; that he in all probability will have no future opportunity for communicating his opinions upon those subjects; and that he sees no reason for believing even the present communication of them likely to be unacceptable to that class of readers to whose decisions upon questions of criticism, politics, and ethics, he is disposed to pay the greatest respect.

The Editor owes great praise to the patience, diligence, and even sagacity of his Printer, in contending with the difficulties of a manuscript, which was sent to him in loose papers, had been written by eleven different scribes, and obscured by numerous references, corrections, erasures, and additions. In truth, the Editor has felt frequent and serious inconvenience from his early and perverse inattention to an attainment, the usefulness of which was justly appreciated by an ancient critic: "Non est aliena res, quæ fere ab honestis negligi solet, cura bene et velociter scribendi. Nam cùm sit in studiis præcipuum, quoque solo verus ille profectus, et altis radicibus nixus paretur, scribere ipsum: tardior stylus cogitationem moratur; rudis et confusus intellectu caret: unde sequitur alter dictandi, quæ et transferenda sunt, labor."* He unfortunately accustomed himself "velociter scribere, non bene," and often has he been induced by

* Quintilian, lib. i. cap. i. p. 13. ed. Gesner, V. Not. et VV. LL.

his own painful experience to recommend Quintilian's observation to young men, who, conscious of their natural talents, and their literary acquisitions, were disposed to slight good penmanship, as below the notice of a scholar. He has sometimes wished that it had been his own lot to aspire to the calligraphy of the Antiquarii, or the united accuracy and rapidity of the Notarii, whom Scaliger describes in his learned remarks upon Ausonius,* Those wishes must now be unavailing—But he hopes to put some check upon the boyish heedlessness, or petty vanity of other men, by reminding them, that in the art of writing Mr. Fox was eminently distinguished by the clearness and firmness, Mr. Professor Porson by the correctness and elegance, and Sir William Jones by the ease, beauty, and variety, of the characters which they respectively employed.*

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* Vid. Note on Epigram 146, and Epistol. 16.

CHARACTER

OF

CHARLES JAMES FOX.

I HAVE long been anxious to convey to you my condolence on the death of our inestimable friend Mr. Fox. But I have been hitherto restrained by the dread of appearing to you obtrusive in the fresh hour of your affliction; and by a consciousness of my own inability to administer much to your comfort. Such is the wise constitution of our nature, that in certain situations, and for a certain time, it is better for us to follow the instinctive impulses of our feelings, than to wait for the slow and calm direction of our reason. Grief under such circumstances is impatient of the slightest interruption to that series of ideas which is most congenial to itself; and we then reject the very same topics of consolation, which we afterwards cherish and approve, when they occur to us spontaneously, or when flowing from those around us, they fall in with other trains of thinking, which time has silently introduced into our bosoms.

Well knowing the poignant anguish occasioned by the loss of those whom we have been accus-

tomed to regard with affection, I cannot but take a most lively share in your distress, heightened as I am aware it must be by the continual privation of the delight you formerly experienced in the conversation of a cheerful, sagacious, and most faithful friend. Pardon me, however, for expressing my hope that you are beginning to find some consolation, as I do, in reflecting upon the numerous and matchless excellencies of one whom England ought to consider as its best guardian, and the world as its most noble ornament. If the sublimity of his genius, the depth and variety of his knowledge, the solidity of his judgment, the gentleness of his private and the moderation of his public conduct, offer themselves to your mind, the sense you entertain of all his amiable and all his venerable qualities, accompanied perhaps by transient and involuntary illusions of his momentary presence among us, may suspend or mitigate your sorrow.

The pleasure I have myself had, though sometimes alloyed by melancholy, in looking back upon the many hours which I have passed in Mr. Fox's company, naturally leads me to consider your lot as highly fortunate, in having for so many years diligently cultivated, and uninterruptedly enjoyed the confidence of so valuable a man, and in the many endearing recollections which your long and unreserved habits of intimacy with him cannot fail to supply. If you had been called upon to select a friend from the whole human race, where could you have found one endowed as he was with the guileless playfulness of a child, and the most correct and

comprehensive knowledge of the world; or distinguished as he was by an elegant taste in the dead and living languages, by a thorough acquaintance with the most important events of past and present times, by a profound skill in the history, and by a well founded and well directed reverence for the constitution of his country, and by the keenest penetration into all the nearer and all the remoter consequences of public measures? Where could you have found a statesman so qualified by the impartiality of his spirit and the extent of his views to fix upon right measures for the accomplishment of right ends: to separate appearances from realities in the political horizon: to reason down local and temporary prejudices into subjection to the eternal laws of justice, and to infuse confidence into the minds of enlightened foreigners, with whom he was officially to discuss the intricate and jarring claims of powerful and jealous nations? Where could you have found an orator gifted with properties of eloquence so many and so great, always exciting attention by his ardour and rewarding it by his good sense; always adapting his matter[1] to the subject, and his diction to the matter; never misrepresenting where he undertook only to confute, nor insulting because he had vanquished; instructive without a wish to deceive, and persuasive without an attempt to domineer; manfully disdaining to seize the incidental and subordinate advantages of controversy, and inflexibly intent upon develop-

[1] The figures refer to the Notes at the end.

ing the substantial and specific merits of the cause in which he was engaged; eager for victory only as the prize of truth; holding up the most abstruse and uncommon principles in the most glowing colours, and dignifying the most common by new combinations; at one moment incorporating it with argument, and at the next ascending from historical details to philosophical generalization; irresistible from effort, captivating without it, and by turns concise and copious, easy and energetic, familiar and sublime.

Furnished you certainly are with such delicacy of perception and such fulness of information, as qualify you to appreciate that assemblage of intellectual faculties, which in Mr. Fox was characterised by variety without disproportion, and by splendour without glare. But you must surely have been charmed again and again with those manners which in him were the native expressions of his thoughts, and with that temper which preserved him from the weakness of vanity, the corrosions of envy, and the asperities of pride; struck you must have been, equally with that tranquillity and firmness of soul which appeared so conspicuously through the whole career of his political life. Amidst the fiercest animosities of party contention never did the infidelity of associates, nor the calumnies of foes, destroy his equanimity. In the most alarming state of public ferment, never did the intreaties of his friends nor the menaces of his accusers, induce slacken his exertions in the cause of public Never was his piercing and ready wit so

grandeur. Contempt of perfidy, and indignation against cruelty would have called forth those powers in the writer, which we have again and again witnessed with astonishment in the speaker, and when his taste[5] had come in to the aid of his other intellectual attainments, we should have found that his education as a scholar, and his pursuits as a statesman, peculiarly qualified him for the most arduous and exalted duties of an historian. His memory seems never to have been oppressed by the number, or distracted by the variety of the materials which he had gradually accumulated. Never indeed will his companions forget the readiness, correctness, and glowing enthusiasm with which he repeated the noblest passages in the best English, French, and Italian poets, and in the best epic and dramatic writers of antiquity. But that he should look for relaxation to his understanding, or amusement to his fancy in the charms of poetry, is less remarkable than that he should find leisure and inclination to exercise his talents on the most recondite, and I add the most minute topics of criticism. He read the most celebrated authors of Greece and Rome, not only with exquisite taste, but with philological precision, and the mind which had been employed in balancing the fate of kingdoms seemed occasionally like that of Cæsar when he wrote upon grammatical Analogy, to put forth its whole might upon the structure of sentences, the etymology of words, the import of particles, the quantity of syllables, and all the nicer distinctions of those metrical canons,[6] which some of our ingenious

countrymen have laid down for the different kinds of verse in the learned languages. Even in these subordinate accomplishments he was wholly exempt from pedantry. He could amuse without ostentation, while he instructed without arrogance. He enlarged his own knowledge of real life by reflecting upon fictitious representations of characters and manners; and by the productions of the comic and the tragic Muse he was prepared to give greater compass to his arguments, greater vivacity to his illustrations, and greater ardour to his remonstrances and warnings in parliamentary discussions. Thus he turned to the most important uses in practice those acquisitions in which the generality of men are content to look only for the gratification of harmless curiosity, or the employment of vacant hours, for speculative improvement or literary fame.

I ought particularly to notice that in Euripides and Aristophanes he found the richest treasures of that political wisdom, which in common with other enquirers, he sometimes drew from other sources in the works of orators and historians. Critics must often have observed a peculiar resemblance between Mr. Fox and Demosthenes in their disregard of profuse and petty ornaments, in their application of the sound, the salutary, and sometimes homely maxims which common life supplies for the elucidation of politics, in the devotion of all their mind, and all their soul, and all their strength, to a great subject, and in their eagerness to fix upon some pertinent and striking topic, to recur to it frequently,[7] suddenly, forcibly, and upon each recurrence to hold

it up in a new light, and point it in a new direction. But biographers will do well to record that in conversing with a learned friend he professed to receive more delight from Cicero than from Demosthenes.[8] Experience in this, as in other instances, puts to flight the conclusions which theorists might be prone to draw from apparent likeness in the characteristic traits of style. Similitude is not always the effect of voluntary and conscious imitation, nor does approbation always imply direct and general preference for the purposes of composition. We have been told that Euripides was the favourite writer of Milton in his closet; but in Milton's poetry we often meet with the bolder features and the more vivid colouring which enrapture and astonish us in the tragedies of Æschylus.

From our own experience, you and I can rectify the mistakes into which persons unacquainted with Mr. Fox have fallen, when they supposed his talent for conversation to be wholly disproportionate to his excellence in public speaking.

He that on no occasion would have borrowed "Garagantua's mouth,"[9] may not have been much disposed to summon the whole force of his mind in the presence of Dr. Johnson, whose Toryism he could endure, because he respected his genius. The plain truth is, that Mr. Fox had neither the general taciturnity of Mr. Addison, who, "without having nine-pence in his pocket, could draw for a thousand pounds;" nor the general felicity of Mr. Burke, who, "take him up where you would, was ready to meet you; who talked, not from the desire of dis-

tinction, but because he was full; whose conversation, beyond that of any other man, corresponded with his general fame; and yet who, upon some occasions, was satisfied with ringing the bell" to our indefatigable, inexhaustible, indomitable lexicographer. But you and I can look back to many hours when Mr. Fox was not content to be *auditor tantum*—when, with the utmost alacrity, he would take his share in the liveliest and the gravest discussions—when he trifled without loss of dignity, or disputed without loss of temper—when he opposed, only because he really dissented, and yielded as soon as he was convinced—when, without prepation, he overcame the strong, and without display he excelled the brilliant. Sometimes indeed he was indolent, but never dull; and sometimes reserved, but never morose. He was swift to hear, for the purpose of knowing and examining what scholars and men of sense were disposed to communicate, and slow to speak, from unwillingness to grapple with the ostentatious, and to annoy the diffident. Though he commanded the attention of senates, he was not therefore presumptuous enough to slight the good opinion of wise and learned companions. But he might often meet them with spirits exhausted by intense exertion in public debate, or private reflection. He might carry with him trains of thinking, which were connected with political subjects of high importance, and which produced in him a temporary indifference to literary discussions. He might, in the society even of literary men, have sometimes looked for opportunities of relaxation,

resemblance, and he could calculate with exactness all the properties of causation, whether simple or complex, proximate or remote. He did not disdain to estimate the force of local and temporary circumstances. But in guiding his audience to ultimate decision, he taught them to look beyond those circumstances to the broader character stamped upon human events and human actions by the general laws of the physical and the moral world. For part of this excellence he perhaps was indebted to the habit which pervaded both his private conversation and his public speeches, and which never permitted his words to stray beside the course, or vary from the form, or swell beyond the size, of the conceptions they were intended to convey.

In addition to the cause which I have just now assigned for the intellectual endowments of Mr. Fox, other causes equally efficacious might be adduced with equal propriety. But it is of more importance for me to remark, that many of those endowments afforded the most direct, constant, and powerful aid to his moral qualities. True benevolence is not merely guided, but enlarged and invigorated by true wisdom. It derives from practice that activity and that consistency, the want* of which we are often compelled to deplore in the conduct and even the tempers of philosophers, who have employed the greatest talents in the investigation of moral theories. It teaches all men to sympathize with the sorrows and joys of their fellow-

* Vid. Cicero, Tusculan. Quæst. lib. i. parag. 4.

creatures, and impels them to alleviate the one, and to perpetuate or heighten the other. But in Mr. Fox we behold the last, greatest, best, and rarest of its effects—we behold them in the disposition which he manifested, not only to love and encourage virtue, but upon every proper occasion to admit and to enforce every possible extenuation of "all the sins, negligences, and ignorances" to which man is made subject by the will of his Creator; subject, dear Sir, for purposes, sometimes, I grant, inscrutable, but in numberless instances, I contend, visibly righteous and wise.

To the peering and stern genius of modern loyalty, Mr. Fox might have transferred the language of Dr. Jortin, in his propitiatory address to the majesty of modern orthodoxy—

"Invitus, Regina, tuo de littore cessi. But "alas, opinion," says the same writer, "is a Queen who will not accept of such excuses."*

Suspicion, a lowering and sleepless centinel, keeps eternal watch at the door of her council chamber—Treachery wafts every whisper of complaint from every quarter to her ear—Dogmatism stands tiptoe with all the engines of interpretation at hand, to torture dissent into impiety or treason, before her tribunal—Intolerance gives the signal to her body guards, and when Persecution waves the banner of destruction, legions of frantic and ruthless vassals are ready to sally forth from their dark ambuscade, to raise the war-whoop, unsheath their

* Remarks on Eccles. History, vol. ii. p. 307.

sabres, and imbrue themselves in the blood of every offender who presumes to investigate the rights of the usurper, hesitates to obey her merciless decrees, or refuses to echo and re-echo her senseless jargon. We cannot therefore wonder, that from bigots in politics Mr. Fox was in danger of incurring the same rough treatment, which Jortin and other worthies have often deprecated from the doughty champions of theology.

What, I would ask, are the offences which subjected him to so much obloquy? Did he debase the dignity of any important cause by the affectation of singularity, or disturb the course of grave discussion by perverse cavils or ostentatious refinements? No. —But in pleading for the social rights of man, beset as they were by perils seen, and unseen, and assailed at once by powerful enemies and perfidious friends, he paid little deference to authority without reason, and to assertion without proof—He looked with equal distrust upon romantic paradoxes, which dazzle superficial observers under the imposing name of discovery, and upon trite and shewy generalities, which are rarely applicable to such new modifications of duty, or such new opportunities for action, as arise from new, blended with the old, relations of individuals and communities—He shewed peculiar dexterity in unravelling the webs of technical sophistry, and peculiar zeal, too, in scattering to the winds all the mischievous fallacies wrapped up in them by certain disputants, who, from the mechanical influence of their daily employment, direct their attention to the darker side of

human characters, and human affairs, who feel their usefulness to consist rather in enforcing restraints than regulating encouragements, who too frequently acquire more expertness in imparting plausibility to misrepresentation than luminousness to truth, who sometimes lose in real wisdom not less than they gain in artificial subtlety, and who chiefly derive their information from the remote analogies,[10] or arbitrary rules of jurisprudence, rather than from the affinities and contrarieties of political systems, and the diversified energies of moral causes.

Such, dear Sir, seemed to be the opinion of Mr. Fox, when he rose to explain what others had been labouring to distort or to disguise—when he extricated right premises from the knots of wrong conclusions—when he opened some new track to principles, through a long and crowded maze of precedents—when he rescued credulity from the snares spread for its weakness, by the nimble sleights of interpretation, and amidst "the noisy strife of tongues"—when he crushed petulance under the weight of argument—when he vanquished ingenuity by the tactics of common sense—when he set well-disciplined facts in array against a column of sturdy assumptions, preceded by raw recruits of jests and jeers, protected in the more vulnerable quarters by light hussars of quirks and quibbles, and followed by a sable rear-guard of veteran truisms, ready at any time to swell "the pomp and circumstance" of wordy war, and to serve, like Swiss mercenaries, under any leader, and in any cause. Peculiar to Mr. Fox that opinion was not, for I am acquainted

with other persons of deep reflection and unsullied who hold and avow it; and I have seen, too, something like the effects of it, when flippant quips and solemn see-saws were put to flight by the irresistible wit of Mr. Sheridan, the masterly logic of Mr. Windham, and the stately eloquence of Mr. Pitt. But as Mr. Fox expressed the sentiments to which I allude, only in the discussion of political affairs, I am sure that, like other scholars and other statesmen, he felt a due, and therefore a great respect, for the knowledge and talents of professional men upon professional subjects. He would have allowed Æolus*[11] to bluster in his cave, and rule over the winds committed to his charge; but wished to exclude him from exercising any dominion over the ocean, as the nobler prerogative of a higher deity.

Mr. Fox was not absurd enough to imagine that the study of laws was wholly separate from that of politics. On the contrary, he knew the various points in which they were connected, and in the most interesting discussions he illustrated that connection with a readiness, clearness, and precision, which unhappily and unexpectedly put an end to the embarrassments, and a check to the refinements of the ablest pleaders, and which might have induced his hearers to suppose that he had been himself "fortia verbosi natus ad arma Fori."† He had been the attentive hearer of an Erskine, a Dunning, a Mansfield, a Thurlow, and a Camden. He was the professed admirer of Lord Somers. He felt all

* Vid. Æneid, lib. i. † Vid. Ovid. Trist. lib. iv. Eleg. 9.

the veneration due to the names of a Coke, a Hale, and a Bacon. But he distinguished between the duties of a legislative assembly and a court of judicature —between the letter and the spirit of law itself—between the principles of a science, and circumstances which accompany the application of it, in the prejudices and peculiarities of its professors. He thought that men who could settle very well disputes about *ruta cæsa* and *caduca legata*, and take due cognizance of greater crimes than the theft of trium capellarum, were not the fittest persons to have provided against the defeat at Cannæ—to have conducted a negociation in the Bellum Mithridaticum—to have counteracted the sagacity of Hannibal, when he gave effect to the *perjuria Punici furoris*, or to have appeased the dreadful contentions of a Sylla and a Marius.* He would not have been disposed to say of any class among his contemporaries, what was said of old by Mægillus, ὅσοι τῶν Ἀθηναίων εἰσὶν ἀγαθοὶ διαφερόντως ἀγαθοὶ εἰσί. † But he had observed, that the habits of reasoning which some men almost mechanically contract from long practice in their own profession, produce a narrowness and obliquity in their way of thinking upon subjects partially or incidentally related to it. He seems to have suspected, too, that the frequent triumphs of subtlety might now and then in speculation weaken our natural love of truth, and in practice generate a dangerous indifference to those plain and salutary rules of conduct for which we have daily and hourly

* Vid. Martial, lib. vi. epigr. 19. † Vid. Plato de Leg. lib. i.

lawyers to the subtlety of schoolmen, will not surprise you, when you recollect the observations of Blackstone, in his chapter on the rise, progress, and gradual improvements of the laws of England. In describing the substitution of Norman for Saxon jurisprudence, he tells us, that "the age in which it took place, and those immediately succeeding, were the æra of refinement and subtlety. That the divinity and law of those times were frittered into logical distinctions, and drawn out into metaphysical subtleties, with a skill most amazingly artificial; but which served to no other purpose than to show the vast powers of the human intellect, however vainly or preposterously employed—that law in particular, which (being intended for universal reception) ought to be a plain rule of action, became a science of the greatest intricacy—and that those scholastic reformers have transmitted their dialect and finesses to posterity, so interwoven in the body of our legal polity, that they cannot now be taken out without a manifest injury to the substance." They who employ their abilities in a science accompanied by such a dialect and such subtleties cannot wholly escape their unfavourable effects upon the human understanding; and if a statesman were to draw his principles of action, or his turn of reasoning, from a political work of Thomas Aquinas,[13] upon the Republic of Aristotle, the scholastic character would surely be impressed upon his language, his opinions, and his measures.

Take notice, dear Sir, that while I am stating Mr. Fox's opinion, I have no wish to dissemble my own.

I do not draw, as he would not, general and invidious conclusions from particular and offensive instances.[14] I distinguish, as he would have done, between the profound and the superficial, the discreet and the forward, the honest and the venal,[15] in every class of mankind. I know, as he did, the indispensable and supreme importance of law [16] itself to the well being of every community, the energies of every government, and the safety, I had almost said, the innocence, of every individual. I am scarcely acquainted with any profession where the strongest powers of the human intellect, but assisted, you will always remember, by a liberal education, and directed by virtuous principles, can find a more extensive range for observation upon the motives and consequences of human action in private life, or be employed with more beneficial effect to human happiness in the ordinary intercourse of society. Like Mr. Fox, I have myself the honour to rank among my friends persons who deserve all the professional fame which they have acquired, and who deserve it the more, because they are gentlemen, scholars, and philosophers, as well as successful pleaders,—because their highly cultivated understandings enable them to discern the rules which ought to guide, and the boundaries which ought to limit, the application of their professional notions and usages to politics, and, above all, because they would disdain to barter their integrity for office, and prostitute their great abilities and great knowledge in the service of corruption and despotism.

Instead of wasting his time upon doubtful and

unprofitable topics of controversy, Mr. Fox watched the effects of the controversial spirit upon religious establishments and sects; and, while he respected the ancient and salutary privileges of the one, he paid a proper regard to the civil rights of the other. This impartiality arose, not from a secret and criminal indifference to religion itself, but from his attention to the various kinds and degrees of influence which the more and the less rational modifications of it appear to have, under various circumstances, upon private morals and the public peace—from his knowledge of the instructive lessons which history furnishes, upon the inefficacy as well as the injustice of multiplied restraints, and from his dread of the mischievous consequences which have arisen in our own, and in other countries, when persecution, direct or indirect, has long preyed upon the spirits of honest men, and when opportunities have suddenly started up for religious zeal to unite with political discontent, in avenging by one effort, without discrimination and without mercy, the real or supposed wrongs of many preceding generations. He therefore acted, as well as reasoned, in conformity to the well-founded observation of Mr. Burke, that "our constitution is not made for great, general, proscriptive exclusions,"—and that, "sooner or later, it will destroy them, or they will destroy it." *

Bent upon promoting the solid interests of his countrymen, by intelligible as well as honourable

* Vid. Mr. Burke's Letter to Sir H. Langrish.

expedients, and unwearied in surmounting the obstacles which passion, or prejudice, or selfishness might have raised around them, Mr. Fox was neither awed by prescription, nor beguiled by novelty —he made no surrender of his conviction to his ambition—he entered into no compromise between his duties to the higher and to the lower classes, nor did his employments and connections as a politician blunt his sensibility as a man. Ready he was, not to irritate nor delude, but by regulations, or perhaps indulgencies, to protect those fellow-subjects who are inevitably doomed to toil and die without the cheering hope of distinction, and who, suffering much, may be pardoned for the infirmity of fearing more, from "the scornfulness of the wealthy, and the despitefulness of the proud"—ready to procure for them the attentions and aids which substantial justice would grant without reluctance, and sound discretion even proffer without solicitation, to their wants, their numbers, their rights from nature, and their usefulness to society — ready to put their reason, their gratitude, and their instinctive sense of self-preservation, and self-interest, on the side of a government, by which they experimentally found themselves to be mildly and equitably treated, and thus to soothe many of the galling and dismal feelings which lurk and throb within the breast of man, from the consciousness of neglected indigence, slighted merit, and weakness alarmed by insult bordering upon oppression.

Doubtless he discerned with equal sagacity, and would have opposed nearly with equal steadiness,

the silent encroachments, and the rapid strides of tyranny—but he never expressed, nor entertained, any unseemly, or fantastic, or virulent prejudice against royalty. He praised with ardour, the memory of good kings [17] in every age—he unfeignedly and uniformly approved of the kingly office as established in this country, where by the provisions of law, and with the concurrence of general opinion, directed and animated by general experience, it confers great power, connected with great duties, and where the discharge of those duties is most honourable to the Sovereign, and most beneficial to the people.

That "negligentia non ingrata" * which Cicero and our friend admired in style was diffused through his behaviour to persons of all ranks. It was the native ease and frankness of a mind reposing on the consciousness of its own strength, and disdaining to force attention by turbulent self-importance, or to conciliate favour by appearing to be what it was not. Among judicious observers of the real man, it had the same effect which artists ascribe to wet drapery on well-wrought statues. It delighted his friends, it softened for a while his enemies, and it offended only vain and testy persons, who overrated perhaps their own consequence, and who had been taught to estimate the propriety of demeanour by its studied and multiplied formalities. But even the chronicles of slander furnished by court gossips, were never tainted with a fouler calumny than that

* Vid. Cicero, in Orator. 77.

which charges Mr. Fox with want of personal respect to his royal master.

Though Demosthenes,* before he went on his embassy, had boasted that he would "sew up Philip's mouth with a dried bulrush," yet he was scared into confusion and silence by that grandeur of mien which he for the first time witnessed in the man of Macedon, and by the novelty of his own situation, when speaking, not before a coarse and giddy populace, but a resolute, sagacious, and mighty monarch. Mr. Fox, on the contrary, had not learned his manners, as Demosthenes did, in the school of tumultuous assemblies, or from the lessons of noisy demagogues—he was himself a gentleman much above the common level, both by birth and connexions—he, from his boyhood, had lived with ministers, and the adherents of ministers—in his youth he had visited the most polished courts in Europe, and as the society of princes and nobles was familiar to him, he had acquired the habits of politeness without servility, and freedom without impertinence—in the presence of young Ammon's son,† he, in all probability, would not have carried one shoulder too high, nor have imitated the soothsayer, who, for the purpose of adulation, violated[18] the idiom of the Greek language‡—in the palace of Augustus he would not have meanly cast down

* Vid. Leland's Life of Philip, book iii. section 2, and the marginal references to Æschines.

† Vid. Preface to Pope's Satires.

‡ Vid. Plutarch, in Vit. Alexandri.

his head[19] to gratify an emperor who prided himself on the piercing brightness of his eyes—in transacting business of state with Charles the Sixth, he would not have gone away satisfied with the confused, inarticulate, unmeaning gibberish[20] which that sovereign employed to disguise his own thoughts, and to put ambassadors under the necessity of standing aloof. Though free from the arrogant temper of Chrysippus,* he might have so far resembled that philosopher, as not to dedicate any of his writings to sceptered patrons. But surely the man in whom the "asperitas agrestis et inconcinna"† was never seen in his intercourse with equals or inferiors, was the most unlikely person in the world to gratify his pride or his spleen by presuming to tell a king not "to stand between himself and the sun."[21] He had been accustomed to pay honour to persons of all ranks, wheresoever honour was due, nor could he upon any occasion forget that in this country, where the kingly office is the great fountain of external distinction, usage and laws have wisely appointed every mark of external homage which gesture or language can express. He had not, I must acknowledge, the same pretensions to urbanity with that smooth courtier,‡ the humble servant to "all human kind, who, when his tongue could scarce stir, brought out this, 'If where I'm going, I could serve you, Sir?'" He is

* Vid. Diogen. Laert. lib. vii. segn. 185.
† Vid. Horace, Epistle 18. lib. i.
‡ See Pope's Moral Essays, Epistle 1.

said to have dealt not very profusely, "in the holiday and lady terms"* which warble in a drawing-room. Perhaps in the hearing of Majesty itself, he sometimes delivered, and enforced his own opinions, with that earnestness which became a great man, discharging great duties, and with that plainness of air, and tone, and diction, which is not very usually found among those who crouch that they may be noticed or rewarded, and flatter, though they would not hesitate to betray. This, I am confident, was the very head and "front of his offending,"† and no more; for no more did I ever hear from persons whose high situation gave them easy and frequent access to their Sovereign, and some of whom were not much prejudiced in favour of Mr. Fox. You and I, dear Sir, have more than once been annoyed with the story, and were it true, we should blush for our friend—but I have never been able to trace it beyond the prattle of those gaudy triflers,[22] whose busy hum, and mischievous whispers, ought not to be tolerated for one moment in quarters where the temptations to lying are so strong, the opportunities so numerous, and the consequences so pernicious. Let us then dismiss the silly tale, as unworthy not only of the smallest credit, but the smallest attention, from men of sense and honour—let us leave it in full possession of one privilege to which it really is entitled—the privilege of being reported only by the malevolent, and believed only by the foolish.

Mr. Fox knew well that, not only among our-

* Vid. Act 1, Part i. of Henry IV. † Vid. Othello.

selves, but in ages less enlightened, and in countries less free than our own, some men might acquire a strong partiality towards theories in favour of republicanism, from the peculiar structure of their minds, or the peculiar course of their studies. But he also knew, that upon questions of such magnitude, virtuous men pause before they press forward from theory to practice, and that rash men would be most effectually appeased or restrained, if statesmen, neither flattering the prince nor deceiving the people, would adhere to the genuine principles of the constitution. He knew yet farther, that a government administered according to those principles must have little to fear from visionary projectors or turbulent demagogues—that by the evidence of "good works" it could soon "put to silence the ignorance of foolish men;" that, confiding in its own rectitude, and its own strength, it would be slow to infer wicked intention from erroneous opinion, slow to employ severity rather than lenity, even as the instrument of prevention, slow to accuse unless it were able to convict, and slow to punish, unless it were unable to reclaim. If these be wrongs, the blame seems to lie with Nature for disposing Mr. Fox to commit them, and with the constitution for supplying him with so many reasons to think himself right.

Mr. Fox, though not an adept in the use of political wiles, was very unlikely to be the dupe of them. He was conversant in the ways of man, as well as in the contents of books. He was acquainted with the peculiar language of states, their

peculiar forms, and the grounds and effects of their peculiar usages. From his earliest youth he had investigated the science of politics on the greater and the smaller scale. He had studied it in the records of history, both popular and rare, in the conferences of ambassadors, in the archives of royal cabinets, in the minuter detail of memoirs, and in collected or straggling anecdotes of the wrangles, intrigues, and cabals, which, springing up in the secret recesses of courts, shed their baneful influence on the determinations of sovereigns, the fortune of favourites, and the tranquillity of kingdoms. But that statesmen of all ages, like priests of all religions, are in all respects alike, is a doctrine, the propagation of which he left, as an inglorious privilege, to the misanthrope, to the recluse, to the factious incendiary, and to the unlettered multitude. For himself, he thought it no very extraordinary stretch of penetration or charity, to admit that human nature is every where nearly as capable of emulation in good, as in evil. He boasted of no very exalted heroism, in opposing the calmness and firmness of conscious integrity to the shuffling and slippery movements, the feints in retreat, and feints in advance, the dread of being overreached, or detected in attempts to overreach, and all the other humiliating and mortifying anxieties of the most accomplished proficients in the art of diplomacy. He reproached himself for no guilt, when he endeavoured to obtain that respect and confidence, which the human heart unavoidably feels in its intercourse with persons, who neither wound our pride nor

take aim at our happiness, in a war of hollow and ambiguous words. He was sensible of no weakness in believing that politicians who, after all, "know only as they are known," may, like other human beings, be at first the involuntary creatures of circumstances, and seem incorrigible from the want of opportunities or incitements to correct themselves; that, bereft of the pleas usually urged in vindication of deceit, by men who are fearful of being deceived, they, in their official dealings with him, would not wantonly lavish the stores they had laid up for huckstering in a traffic which, ceasing to be profitable, would begin to be infamous; and that possibly, here and there, if encouraged by example, they might learn to prefer the shorter process, and surer results of plain dealing,[23] to the delays, the vexations, and the uncertain or transient success, both of old-fashioned and new-fangled chicanery.

In these sentiments, which evinced at once his penetration and his liberality, Mr. Fox had the concurrence of a friend who had reached, I believe, his sixtieth year, without having had recourse to deceit in his own personal or professional intercourse with society, and without envying the exploits of the most skilful and fortunate deceivers. Many, he would say, are the errors, and many the faults, which leave room for a man to rally after detection, and to regain the good opinion of others, or to bear up against their censures. But forlorn indeed is the condition of cunning, when, left defenceless by the failure of its own spells, it has been dragged into open day. In a moment the sorceress shrinks into

a crippled, ugly, dwarfish hag, excites contempt without appeasing suspicion, and is hunted down with derision, by the brave for its deformity, and by the timorous for its impotency.

For political investigation, in which principles and the practical decisions resting on them often hinge upon a single phrase, Mr. Fox was qualified, not merely by his prompt recollection of parallel cases recorded in history, or preserved in state papers, but by his just and distinct conceptions of those abstract terms which, though employed very frequently, are sometimes understood very imperfectly. Power, he was well aware, though it does not enter as an integral part, into our notion of right, is an inseparable adjunct to it, and in scholastic language may be denominated the conditional cause; for who would seriously insist upon a right, without having any present, or expecting any future power to use that which he now possesses, or that which he would hereafter obtain? Would not right, if under such circumstances it deserved the name, be at once barren to individuals and injurious to society? While it produced no materials for additional advantage to the claimant, would it not lessen the general stock of happiness, by excluding other occupiers, whose talents or labours employed upon the object, would contribute to the increase of that stock? In practice, then, mischief arises, not from the mere act of uniting the idea of power with the idea of right, but from the untoward propensity of mankind to make their own rights co-extensive with their own powers—from their propensity to

envy and undermine the superior pretensions of others, when they can be enforced by superior might—from their propensity to despise, and to tread under foot such pretensions, while they lean for support upon reason alone. The propensities here enumerated, and other causes which more or less co-operate with them, the absence of an intelligent, patient, and upright mediator, dissembled ambition in the stronger party, ill-timed sturdiness in the weaker, habits of inveterate jealousy in both, caprice roving after experiments, obstinacy clinging to precedents, stern commands from sovereigns, and wry instructions from ministers—these are the obstacles, which, for the most part, clog political negociations, and which occasion astonishment and chagrin to superficial observers, at their tardy progression, sudden interruptions, and unexpected or unwelcome issues.

Whatsoever subtlety some men may affect, and whatsoever distinctions other men may confound in their words, yet in their actions they rarely contend for rights, without looking directly or indirectly to expediency, to good to be now enjoyed and protected, or good to be hereafter attained and secured. In public, no doubt, as in private affairs, the general fact is that utility,[34] upon the whole, is the measure of duty; and the general rule is, that duty itself is to be preferred to some immediate gratification supposed to be within our reach, upon the ground of its tendency to procure some distant gratification of higher value. But the difficulty lies in seeing the ultimate connection between uti-

lity and duty, in marking the intermediate relations of their several parts, in forming right judgments upon the objects which successively present themselves to our minds before we choose finally, in keeping our attention steadily fixed upon those judgments, and in guarding against the undue influence of circumstances fortuitously or slightly conjoined, in our apprehensions, with means, during the process of deliberation, or with ends, at the moment of election.

Now, dear Sir, if Mr. Fox, in his discussions upon State affairs, opened to each party a safe and honourable path, by which the expectations of each might be gratified, without the ignominy of compulsory flight, or the hazards of protracted contest —if, in asserting rights, he not only looked to their origin and past effects, but was disposed to modify them in prudent and honest accommodation to the present interest and the present condition of the parties—if he heard without impatience the proposals, or objections, or pretensions of men grown hoary in watching and working the complex machinery of politics—if he answered them without haughtiness, or indecision, or duplicity—if he set before them the clearest and largest views of expediency itself—let us not judge so harshly of our common nature as to imagine that he was indebted for his success solely and exclusively to the operation of principles unmixedly selfish. By enabling men to understand more than they understood before, he got the power of persuading them to act better than they would otherwise have acted. By meeting them fairly and dis-

passionately on the grounds upon which they had been accustomed to reason, he induced them to follow him the more readily when he went on to other and stronger grounds. He drew their assent to his opinions in a current of thinking so smooth, or with transitions so easy, as to make their very conversion appear to themselves the legitimate effect of their own knowledge and their own reflection. He gradually, and almost imperceptibly, loosened the bonds which held them in captivity to prejudice, to habit, or even to confused and narrow perceptions of their real good. He thus prepared them for being directly and voluntarily actuated by that sense of justice, which is suspended, not destroyed, by the first tumultuous suggestions of self-interest, which engages pride, not vanity, as an auxiliary to sound discretion, and which infuses even into political measures a kind of conscious security, and conscious dignity, not very often derived from calculations of loss and gain—from a spirit which, let it resist systematically or irregularly, may itself be resisted indefinitely—from rampant eagerness to grasp, and from churlish reluctance to concede.

Looking upon force as the first expedient usually adopted by coarser minds, but the last upon which men truly enlightened will fix their choice, and sensible of the illusions and reciprocal injuries which arise from the want of a common umpire in enforcing the laws of nations, Mr. Fox always found a faithful arbiter within his own bosom. To the decisions of that arbiter he appealed, in some per-

plexing negociations between his own and foreign countries. In conducting them, he entered into the feelings and views of other men, without dissembling his own. He compared that which under all circumstances each might demand, with that which each might concede. He rescued concession itself from every debasing appearance of submission. He strengthened his own title to the ultimate attainment, or the undisturbed use, of great and lasting advantages, by the sacrifice of such as are subordinate, fleeting, or dubious; and he averted the odium which attends superior power, by subjecting the exercise of it to the sacred supremacy of reason. He anticipated, and sometimes experienced, the loss of popularity and station, for venturing to sustain the part which alone would make him deserving of either; and he sought for repose in the approbation of his own mind. But if patriotism upon other occasions, and by other men, were thus tempered by justice,[25] would governments be less stable, ministers less praiseworthy, subjects less prosperous, or princes less venerable? All profess to admire the same plain rule which he followed, and, misguided by ambition or selfishness, they hastily condemned him for following it openly and constantly. Mr. Fox despised, as I do, the quaint devices of that philanthropy which cast into deep shade the virtue of loving our country, and tricked out in garish confusion the social relations of one people to another. But he cherished that love most sincerely, and he applied it to the best uses, by his

profound knowledge and resolute observance of the duties which those relations prescribe.[26]

Our friend, as I have often remarked to you, had deeply explored the essential and characteristic properties of mixed governments,[27] and upon balancing their comparative conveniences and inconveniences, he avowedly preferred them to the more simple forms. He saw in them more correctives for occasional abuses, and more inherent powers for general co-operation in the maintenance of social order. Yet he was aware that, sometimes from the slow, and sometimes from the sudden, operation of external circumstances, liberty may degenerate into licentiousness, and loyalty into servility, and from temperament, as well as reflection, he avoided, and exhorted others to avoid, both extremes. In the wayward passions and jarring interests of mankind he saw all the latent sources from which "offences must come," and without having recourse to the judicial interpositions of Heaven, he believed that, from the fearful and wonderful efficacy of those unalterable and irresistible laws which govern the affairs of kingdoms, evil, sooner or later, would overtake the real aggressor. Upon controverted questions of war, he said, with more consistency than Johnson, and with more sincerity, perhaps, than some of his contemporaries, "cuncta prius tentanda;" and, separating necessity from convenience, he acted up to his professions upon several trying occasions. But as to peace,[28] he loved it, he sought it, he "ensued" it, he was largely gifted

with the "sweetest phrase"* of it, because to himself, as well as to some unknown personage in a work which he read with fondness, peace seemed to include all the constituents of that good[29] which philosophers have vainly sought in other quarters, and speciously represented under other names. Gifted with a faculty of presage not often equalled, in marking the signs of the times, and the bearings of general causes upon particular situations, he wished reform everywhere set up as a barrier against swift and sweeping destruction; and in order to facilitate the attainment of it at home, he enlisted himself, not in a ruffian band of democrats, but in "the noble army" of patriots.

Hence, at a juncture to which my thoughts will often be turned, because it forms a memorable æra in his life, he took the station pointed out to him by his judgment and his feelings. Favoured by little assistance from partizans, and having no other guidance than his own sense of imperious duty, he was reviled by all bad men; and even by some good men he was blamed for unseasonable and unbecoming pertinacity. Yet his candour prevented him from scoffing at the mistakes and prepossessions of other men with rude contempt: his good sense and his good nature did not permit him to slight the censure of those whom he had been accustomed to esteem: he was pierced with sorrow—not paralized by fear—and he journied onward, though wild beasts from the forest yelled

* Vid. Othello.

around him, and though "a lion stood in the way."

There is one topic, dear Sir, upon which I should be inclined to be quite silent, if I did not foresee that silence would, in some quarters, expose Mr. Fox to the suspicion of impiety, and myself to the imputation of indifference. Something therefore must be said upon it, and I will endeavour to say it intelligibly and ingenuously.

Of Mr. Fox's religious tenets, then, I cannot speak so fully, as from motives, not of impertinent curiosity, but of friendly anxiety, you may be disposed to wish. But I have often remarked that upon religious subjects he did not talk irreverently, and generally appeared unwilling to talk at all before strangers or friends. When we look back to the studies, and indeed the frailties of his youth, and the employments of his manhood, it were idle to suppose that he was deeply versed in theological lore. Yet, from conversations which have incidentally passed between him and myself, I am induced to think that, according to the views he had taken of Christianity, he did not find any decisive evidence for several doctrines, which many among the wisest of the sons of men have believed with the utmost sincerity, and defended with the most powerful aids of criticism, history, and philosophy. But he occasionally professed, and from his known veracity we may be sure that he inwardly felt, the highest approbation of its pure and benevolent precepts. Upon these, as upon many other topics, he was too delicate to wound the feelings of good

men, whose conviction might be firmer and more distinct than his own. He was too wise to insult with impious mockery the received opinions of mankind, when they were favourable to morality. He preserved the same regard to propriety, the same readiness to attend to information, when it was offered to him without sly circumvention or pert defiance, the same respect for the attainments and the virtues[30] of those who differed from him, and the same solicitude for the happiness of his fellow creatures. Thus much may be said with propriety, because it can be said with truth; and glad should I be if it were in my power to say more upon a point of character, which, in such a man, could not escape the observation of the serious, the misconceptions of the ignorant, and the censures of the uncharitable.

We naturally feel, and we ought to feel, satisfaction, from the concurrence of eminent men in our own opinions upon the most interesting of all questions which tend to exercise or improve the human mind. But it may be doubted, whether the real interests of piety be eventually promoted by officious, severe, inquisitorial scrutiny into the origin and extent of speculative scruples, which the persons who unhappily, and it may be unavoidably, experience them, are too discreet to proclaim, and too decorous to disseminate. Learned, sagacious, and truly devout enquirers are, beyond all other men, aware of the difficulties which sometimes surround the "secret things"[31] that belong to religion; and perhaps, in many cases, it is for the Searcher of

all hearts alone to determine either the merit of assent, or the demerit of suspense. Be this as it may, the spirit of Christianity does not warrant us in passing harsh judgment upon the thoughts of individuals, when they are unaccompanied by presumptuous words, or immoral deeds. Common justice forbids us to confound the unoffending sceptic with the loquacious and profane scoffer, and in times like the present, common prudence seems to require that he "who is not against us," should in some degree be considered as "for us." He at least has not availed himself of that impunity which, in order to guard against the encroachments of persecution, is granted, even in Christian countries, to the avowal of unbelief. He does not aspire to that praise which some men arrogantly claim, when they set up their infidelity as a proof of their own intellectual vigour, their extensive researches, and their glorious elevation above the credulity of the vulgar, and the terrors of the superstitious. Contemplating with reverence, and sometimes with amazement, the moral government of the world, he may feel, in common with many enlightened and pious believers, that "clouds and darkness are around" the Deity, while he acknowledges the force of many consolatory proofs that "Righteousness and Judgment are the habitation of his seat."

If the rank and the talents of Lord Bolingbroke gave undue weight to the dangerous opinions which, after his death, but by his direction, were sent into the world, it is of importance for you and me to remind our countrymen that other persons adorned

by rank equal or nearly equal, and endowed with talents not unequal, have more or less countenanced other and better opinions. Within our own memories, Lord North, Mr. Burke, Mr. Pitt, and Mr. Fox, were the great political luminaries of this country. But however they may have differed from each other in matters of "doubtful disputation," and however any of them might have erred in other matters, which to our apprehensions are clear; yet, as Englishmen, we have reason to rejoice that they were too well principled, and too well disposed, to prostitute their abilities in the service of infidelity —that they did not misemploy their authority, in bringing contempt upon the established religion of their country—that they avoided the guilt which the nobles of a neighbouring country are known to have incurred, when, misled by their vanity, they encouraged the common people to look with distrust and disrespect upon the guides of their faith, and the guardians of their virtue. I leave it to historians to bestow similar commendation upon three or four distinguished but discarded statesmen who are now living, and whom I forbear to name, lest my testimony, though well-founded, and perhaps well-timed, should be imputed to any unworthy motive. It is for my superiors in station and fortune to profit by their example, and it is for myself to pay the homage of my heart to their unostentatious virtues and noiseless piety. "Parco nominibus viventium: veniet Eorum Laudi Suum tempus: ad posteros enim durabit Virtus, non pervenit invidia."*

* Vid. Quintilian, lib. iii. cap. 1.

Let us pass on to other topics, which concern the orator rather than the man.

The most severe and fastidious critic would hardly withhold the praise of originality from the manner of Mr. Fox's eloquence, and perhaps no public speaker has an equal claim to the encomium which Quintilian bestowed upon the philosophical writings of Brutus: "Scias eum sentire quæ dicit."* Systematically Mr. Fox imitated[32] no man, and to no man who is not endowed with the same robustness of intellect and the same frankness of disposition, is he a model for imitation. The profuse imagery of Mr. Burke, and the lofty sententiousness of Mr. Pitt, have produced many followers among the "tumidos, ac sui jactantes, et ambitiosos institores eloquentiæ."† But the simple and native grandeur of Mr. Fox is likely to stand alone in the records of English oratory. Every man of taste would abandon the hope of resembling him in the rapidity of his elocution, in the quickness and multiplicity of his conceptions, in the inartificial and diversified structure of his diction, in the alertness of his escapes from objections which we should have pronounced insuperable, in the fresh interest he poured into topics which seemed to be exhausted, and in the unexpected turn he gave to parliamentary conflicts, which had already exercised the prowess of veteran combatants. Every man of sense, if he reflects upon these transcendental excellencies, will cease to wonder at the complaints which hearers in

* Vid. Quintilian, lib. x. cap. 1. † Vid. lib. xi. cap. 1.

the gallery, and hearers on the floor of the senate, have so often made of their inability to follow Mr. Fox through all his impetuous sallies, his swift marches, and his sudden evolutions—to calculate at the moment all the value of arguments acute without refinement, and ponderous without exaggeration—to discern all the sources and all the bearings of one observation, when, without any respite to their attention, they were called away to listen to another, equally apposite, sound, and comprehensive.

The openings of his speeches were, I grant, sometimes slovenly and uninteresting, and sometimes he seemed to be deserted by words, when his mind was oppressed by crowds of thought which outran his powers of utterance, and which it was impossible for any resolution to repress, or any ingenuity to methodize, instantaneously. But as he advanced, he never failed to summon up growing strength with the growing importance of the subject—never slackened his pace for the sake of momentary relief to himself from intense exertion—never digressed designedly for the mere purpose of amusing or deceiving his audience, nor ever stumbled without the power of rising from his fall with increased vigour and increased speed. In the close, he rarely professed to assist the indolent by recapitulation, or endeavoured to soothe the captious by apology: he disdained to catch applause by a glittering sentiment or a sonorous period: he said what at the instant appeared fittest to be said, and according to the different states of his own

mind, or the different characters of the question, he was temperate without languor, earnest without turbulence, pithy without quaintness, or solemn without grimace.

The luminousness and regularity of his premeditated speeches[33] are, I believe, universally acknowledged, and yet in preparing even them, however convinced he might be with Cleanthes "artem esse potestatem, quæ viam et rationem efficiat," he seemed never to forget "desinere artem esse, si appareat."* But they who impute a frequent and unbecoming neglect of method to his extemporaneous effusions should be reminded, that in arrangement, as well as expression, genius may sometimes "snatch a grace beyond the reach of art." Mr. Fox was not accustomed, like Hortensius, "argumenta diducere in digitos, et propositionum ac partitionum leporem captare," and for this, as well as other reasons, the speeches of Mr. Fox, when we read them, are not exposed to the remark which a critic of antiquity made upon Hortensius, "apparet placuisse aliquid eo dicente, quod legentes non invenimus."† Mr. Fox did not bestrew his exordiums with technical phrases coined in the mint of rhetoric. He did not tacitly compliment the sagacity of his hearers, nor entrap them into admiration of his own precision, by loud and reiterated professions of solicitude to be precise. He did not begin with requiring their attention to a long and elaborate series of divisions,[34]

* Vid. Quintil. lib. ii. cap. 18, and lib. iv. cap. 2.
† Vid. lib. xi. cap. 3.

and then insidiously throw in some extraneous matter to make them overlook the studied violation of the order before proposed, to catch the credulous by surprise, and to let the unwary imagine that a difficulty had been solved, because the intention of solving it had been confidently announced. His transitions were indeed abrupt, but not offensive. They exercised our judgment, but did not perplex or mislead it. Artless and eager he pushed onwards where inferior speakers would have been anxiously employed in anticipating petty cavils, in deprecating perverse interpretations, in stimulating the dull, and flattering the attentive. If a vivid conception sprung up in his mind, he chaced it till he had seized and laid open every property which belonged to his subject, and upon quitting it he without effort returned to the leading points of the debate.

Considered as a leader of opposition who was to investigate the reasons assigned for public measures, Mr. Fox seldom put forth his strength in reply, and perhaps they who engage in it sometimes find themselves exposed to inconveniences which more than counterbalance the advantages of arbitrary selection. A speaker may be compelled to pursue the track pointed out by his antagonist, or to irritate a weary and impatient audience by detailing the circumstances which induce him to strike into another path. He may be required to embody what is scattered in the mass of speeches previously delivered by other men; to restore to its right place what had been pushed aside from it by a crafty, or headstrong, or blundering disputant;

to separate what had been confounded; to elucidate what had been darkened; to bring forward what had been overlooked; to lay bare the unsoundness of premises already admitted, and the fallacy of conclusions already approved; to strip the mask from specious imposture, and to break the spells of misapplied eloquence. Thus arduous is the task of reply; and it were useless to inquire whether Mr. Fox was prevented from frequently undertaking it by the warmth of his temper, by the consciousness of his ability to develope truth in another form, or by his fearlessness of sophistry however dexterous, and declamation however splendid. But that he was thoroughly qualified for performing such a task we have better testimony than the eulogies of his admirers or the concessions of his enemies, and we may find that testimony in the general practice of his keen-eyed competitor. Even Mr. Pitt, though he was himself eminently skilful in reply, seems indirectly to have given Mr. Fox credit for equal skill. Hence with every advantage in his favour from popular opinion and official information, he rarely delivered his own sentiments till his impetuous, and sometimes incautious antagonist had enabled him to discern what to attack or to defend, to enforce or to disguise. Great, I allow, under any circumstances, and in any large assembly, must be the fascination of such a speaker as Mr. Pitt, from the fulness of his tones, the distinctness of his articulation, the boldness of his spirit, the sharp ness of his invectives,[35] the plausibility of his statements, and the readiness, copiousness, and brilliancy

of his style. But I suspect that he was indebted for much of his success to the deliberate and habitual reservation of his strength to undermine what he could not overthrow, to crush by contradiction what he could not distort by misrepresentation, to expatiate on the weaker side of the arguments adduced by his opponents, to thrust back the stronger from the view of his hearers, and to efface the conviction left upon their minds by a mighty rival, when having risen professedly as an answerer he could without detection and without resistance employ every ingenious artifice, and every vehement struggle in making the last impression by his own last words.

You have sometimes complained to me of the annoyance you had suffered from persons who are fond of raising metaphysical mists around the ordinary topics of conversation, who impede the easy movements of common sense by throwing logical obstacles in its way, and who indulged their ill-dissembled vanity, or too well-dissembled spleen, by expatiating upon specious but frivolous distinctions, which confound the unlearned, and mislead the unwary. "The talents of Mr. Fox (say these critics) are not only overrated but misunderstood. He never struck out any new lights, but gave us now and then a more distinct perception of old ones. He thought only what many other men have often thought before him, but he was expert enough in saying it better than it usually is said." Be it so. In politics as in the general science of ethics, it were absurd at this time of day to look for the

discovery of principles in the strict and philosophical sense of the word. Combination, arrangement, improvements in the choice of terms,[36] and above all promptitude, firmness, and integrity in the application of truths long known to ever varying exigencies in the interests of society, and to infinitely diversified contingencies in human life; these are almost the only objects to which the ingenuity of man can be usefully directed in his speculative researches, or his practical pursuits. Here indeed a wide field opens itself for numerous and important differences between different writers, different statesmen, different communities, and different ages. Mr. Fox was not weak enough to pretend to abstract discoveries. He was wise enough to know that in the opinion of Cicero* and other great writers, and in the practice of himself and other great speakers, the most powerful effects are wrought in popular assemblies by the adaptation of matter, and if possible even of language to the common judgments of men, founded as they always are upon the common or uncommon occurrences of the world. He aspired only to the praise of understanding clearly, and directing honestly, those political rules which good sense had suggested to the minds of our fathers, and which in reality had been perceived, disseminated, and approved even "in the old time before them." Happy were it for mankind if his knowledge so acquired and so employed, had never been thwarted by sophistry, never overborne

* Vid. Cicero de Oratore, lib. i. parag. 4.

by declamation, nor finally baffled by contrary notions,[37] which eventually have contributed very little to the honour of our government, or the safety of our country. I have long seen through the specious disguise which at first was thrown over those notions, and I now feel very unpleasant forebodings of their ultimate tendency. But whatsoever errors they might involve, and whatsoever mischiefs they may have produced, I do not forget that they were once adopted by some well-meaning and well-informed men, whose opinions I shall ever disdain to vilify by comparison with those swarms of new and pestilential theories which lately darkened the face of the continent, and compelled every star in the intellectual firmament to "withdraw its shining."

The masculine understanding of Mr. Fox led him to explore and to discriminate most carefully the various sources of those evils, which by ordinary politicians are huddled together into one common lump, and which are ascribed to a few prominent causes, when they in truth are the results of many other causes, less observed indeed, but not less real, nor in their aggregate less efficacious.

He was aware that in the progress of knowledge, men are led, not merely by vague and wanton curiosity, but by the connexion of the subject with their own personal happiness, to enquire into the forms and effects of the government under which they live—that by confused and painful perceptions of wrongs, they are pushed on to frame distinct and indistinct notions of rights—that even in this state

of things, ancient prejudices, wisely managed by their rulers, will check the encroachments or correct the excesses of errors which have not yet taken root, and that partial, but voluntary, and therefore gracious concessions, may be employed as preservatives against the total surrender of authority, to be extorted by undistinguishing and unrelenting violence—that if from indolence or obstinacy, popular discontents are suffered to reach their full height, claims are piled upon claims, reasonable compliances serve only to facilitate such as are unreasonable, respect is not recovered by submission, gratitude is not excited by consent, anger is wrought up to fury by refusal, and the oppressed feeling their strength, cast away all regard to the original merits of their cause, and pant for victory, not safety, for vengeance, not justice, in a successful struggle with their oppressors—that in the agitation of those discordant elements which more or less pervade every society, the usual operations of their attractive and repulsive forces may be so disordered as ultimately to defeat all endeavours to regulate, and even to calculate them, and that rushing together in direct contact, they lay waste all the surrounding scenes with horrible explosion—that without the existence of actual, and at last intolerable grievances, no important revolution was ever yet accomplished by a people among themselves—that the deliberate and long continued neglect of applying proper remedies to those grievances, creates occasions of which bad men most eagerly avail themselves, to disseminate very bad principles—

that theories which thwart the more obvious and uncorrupted conceptions of mankind in politics, morality, and religion, meet with less resistance in consequence of the indignities previously offered to their common sense in common life, under ill-constituted, or ill-administered systems of power—that, in addition to the impatience arising from evils experienced, investigated, complained of, and unredressed, there is sometimes a feverish affection of the mind, when novelty acts with redoubled vigour, and imparts credibility and agreeableness to those representations which in seasons of calmer and sounder thinking, we should reject as improbable and fallacious—that restraints, whether religious or civil, real or imaginary, then crowd upon the memory, and supply fuel to that flame of the passions, which, having been long smothered, is beginning to kindle—that the justifications which formerly soothed or awed the injured party into acquiescence, are sifted rigorously, and unless approved, are sure to be followed by a train of numberless and shapeless spectres, ever ready to start up at the beck of suspicion—that rank and property rarely cease to be safe till their possessors have ceased to be respectable—that the envy of the lower classes is kept in check by an habitual sense of dependence, and by a sullen and dastardly consciousness of imbecility, from which they are roused only by the goads of multiplied injury—that the unbending stiffness, and undissembled haughtiness of the higher ranks, engender resentments which, aided by unexpected circumstances, overcome the fears and the supine-

ness of their inferiors—that pride, repeatedly wounded by insult, precipitates civilized man into all the enormities which the uncivilized commit from the impulses of blind and sudden rage—that grosser acts of oppression, for which their authors often disdain to apologize, and which in times of barbarous ignorance terrified the helpless into abject submission, are in other junctures of public affairs only the proximate and ostensible pretexts for open and extensive revolt—that the more powerful causes lie in more remote quarters, where honest and enlightened statesmen will ever be upon the watch to discover and to counteract them—that they are to be found in those evils which can be mitigated to-day or increased to-morrow by the arbitrary will of rulers; which, if they are disguised or explained away by one set of men, can be brought into view and exaggerated by another; which annoy by their frequency and by their inveteracy rather than by the immediate pressure of detached instances; which at once alarm and inflame, whether the imagination gathers them into heaps, or parcels them out into particulars; which assume every possible appearance of bulk and number, that the afflicted, or terrified, or exasperated mind of men can conceive; which, being at variance with the recent but confident judgments they have formed upon their own interests, become more and more offensive from angry remembrance of the past, and gloomy anticipations of the future; which, scarcely admitting any specific description, and mingling with the general mass of hopes and fears, of new

prepossessions daily thriving, and old ones decaying hourly, cannot be done away by mere palliatives, but which at first, almost imperceptibly, alienate the sentiments of men from their wonted allegiance, and gradually prepare them, while they are unconscious of their perilous situation, for becoming the instruments of hasty, tumultuous, and destructive changes.

Such I conceive to be the point of view in which Mr. Fox contemplated the late disastrous occurrences in France, as fresh events supplied him with fresh materials for knowledge; and in this manner did he account for many of those mischiefs which the authors and propagators of paradoxes hardly believed even by themselves, had secretly planned, and which, emboldened by opportunity, they perpetrated with final and fatal success.

But, whatsoever might be the doom of France, he always bore in mind, that in England there long has existed, and now does exist, a constitution, which if it were not so often assumed as a topic of boasting,[38] but contemplated much oftener as a rule of conduct by statesmen, would leave us every thing to hope from the best feelings of mankind, and very little to dread from the worst.

They who disagree upon the probable merit of measures that were not tried, may find some common test for deciding upon the import of words which were uttered publicly and frequently. I hold, then, that on reading the speeches of Mr. Fox, no judicious and dispassionate man will now profess to find in them the smallest vestige of that tricking

and braggart philosophy which set at nought the authority of all laws and all customs, impudently gave the lie to history and experience, and polluted the sacred names of reason and liberty by affixing them to the most frantic extravagancies and the most atrocious crimes.

Those speeches, if we had been inclined to distinguish between the flashes of eloquence and the light of reasoning, might have guided our feet in the paths of safety. But that philosophy, as I just now observed to you, put out every luminary which had been wont to cheer and direct the eye of the undistempered mind. It glared for a season like a portentous meteor, and then vanished from our view, sinking into a deep and huge abyss, from which it can emerge no more. The intestine war of those elements, which in the usual and regular course of moral causes give health and life to society, is not yet composed. At this moment coruscations of strange and dire aspect are shooting athwart the vast void, and perhaps will be succeeded by a "darkness that may be felt." Yet, "as the violent perverting of judgment and justice in a province is regarded by him that is higher than the highest, I marvel not[39] at the matter," and resist the gloomy suggestions of despondency. Long and unquiet may be the night of sorrow, and over every nation intoxicated by prosperity, enervated by corruption, or hoodwinked in voluntary thraldom, it may be very long, and very unquiet. But "joy cometh in the morning," and my prayer is, that you may live to hail the returning dawn, when the

sun of peace is about to "rise with healing in its wings," to "destroy the face of the covering cast over all people," and to spread around them the pure and refreshing irradiations of justice and truth.

The subjects discussed in some of the foregoing paragraphs, painfully bring to my recollection other matters, which as they immediately concern the memory of Mr. Fox, must not be passed over in silence. In a very elaborate and masterly sketch of Mr. Fox's character, which lately appeared in the newspapers, and which has excited a considerable degree of attention, we are informed, that in the estimation of Mr. Burke, "Mr. Fox, to be sure, was a man born to be loved," and that "by slow degrees he became the most brilliant and accomplished debater Mr. Burke had ever seen."

If Mr. Burke spoke of Mr. Fox as "a man born to be loved," he spoke the truth, but he at the same time passed a sentence of condemnation upon himself, for the severe invectives he had uttered against one who must have been destitute of every property which entitles him to our love, if he really had been, as Mr. Burke in effect declared him to be, the shameless and remorseless advocate of the worst agents in the worst cause, of libertines, plunderers, murderers, and the enemies of God and man—against one whom he had endeavoured to convict of a "high treasonable misdemeanour," in a pamphlet said to have been enlarged and shortened, corrected and re-corrected, during a long and agonizing struggle between rage without fortitude,

and self-reproof without self-command, where many changes reported to have been made in the matter and style indicated no change in the vindictive purpose of the writer—against one whose courteous and affectionate proposal for an interview he is said to have rejected on the approach of those awful moments, when the interrupted or forfeited endearments of friendship are regretted most painfully, when the wonted causes of enmity and competition drop their hold upon hope and fear, and when the good and the bad are alike anxious to forgive and be forgiven, before "they go hence, and are no more seen."

In the preceding paragraph I have adverted to "a Letter from the Right Honourable Edmund Burke to his Grace the Duke of Portland, on the Conduct of the Minority in Parliament; containing fifty-four articles of impeachment, against the Right Hon. C. J. Fox, from the original copy in the possession of the noble Duke."

This terrific title,[40] I believe, proceeded from the editor; but the book itself contains such evidence as left no doubt about the author. The effect produced by this book in separating Mr. Fox entirely from Mr. Burke, and the effects intended by it to blacken Mr. Fox with indelible disgrace, in the mind of the king, the parliament, and the country, never can be forgotton by you or by myself. It appeared in 1796;[41] it refers to events which had occurred some years before; it has every internal mark of deliberation. The writer, in page 6, "that he may avoid the imputation of throwing out even

privately any loose random imputations against the public conduct of a gentleman for whom he once entertained a very warm affection, and whose abilities he then regarded with the utmost admiration, professes to put down distinctly and articulately some of the objections which he felt to his late doctrines and proceedings." Again, in page 81, he speaks of "a full, serious, and he thinks, dispassionate consideration of the whole of what Mr. Fox and Mr. Sheridan had acted, said, and written, in the sessions of 1792, 1793." The interval between the charge and the crimes compels us then to look upon Mr. Burke as delivering his real sentiments—I will therefore produce several of them to justify my opinion, that they tend to do away every favourable impression which may be made by the two observations that have lately appeared in the sketch of Mr. Fox's character. In page 7, Mr. Burke tells us, that "Mr. Fox, without the knowledge or participation of any one member of parliament, with whom he was bound by every party principle, in matters of delicacy and importance, confidentially to communicate, had thought proper to send Mr. Adair as his representative, and with his cypher, to St. Petersburgh, there to frustrate the objects for which the minister for the crown was authorized to treat."

I am not enough acquainted with the circumstances of this transaction, either to justify or to condemn the whole of it. "Scelus* illud vocat Tubero,"

* Vid. Orat. pro Ligario.

and Tubero, as we once heard from many quarters, is "an honourable man." But the conduct of the accuser leads me to suspect that the accusation is at once vague and exaggerated.

Much as may be said about the awful secrets of cabinets, and the profound contrivances of statesmen, men of reading and observation will sometimes be tempted to apply to them, what a great politician once told us of certain Legum Carmina. Dum erant occulta necessario ab eis, qui ea tenebant, petebantur; postea vero pervulgata atque in manibus jactata et excussa,* inanissima prudentiæ reperta sunt, fraudis autem et stultitiæ plenissima. Folly will not be hastily imputed to Mr. Fox; but his well-wishers will be anxious to enquire, what are the grounds upon which Mr. Burke ventured to charge him with the worst kind of fraud. I remember that about the time when Mr. Adair went to Russia, the storm of war which had been gathering passed over. And I farther remember, that this event did not produce any loud complaints that the country had incurred any loss of its honour, or its security. Mr. Burke, indeed, tells us in 1796, that Mr. Adair "had frustrated the king's minister in some of the objects of his negociation." But he does not tell us that the objects themselves were very salutary, or very important. The means of frustrating them he pronounces unconstitutional and illegal. But how does he know it? Or at least, how has he proved it, if he knew it? His tenderness to Mr. Fox was not

* See Cicero's Speech for Muræna, paragr. 6.

always such as to make him very thrifty in imparting this kind of knowledge to other men. If he could have proved it, the anxiety which he professed to feel for his king aud country, and the indignation which he avowed against their foes, whether foreign or domestic, were such, that he would have been justified to himself and to the world in producing the whole store of his proofs. In an exuberance of zeal similar to that he upon a well-known occasion had formerly manifested for impeachment,

> "Did he appeal our friend on secret malice,
> Or, worthily, as a good subject should,
> On some known ground of treachery in him?"

If, to adopt the language of Mr. Burke in another passage, "the intentions of Mr. Adair were pure," was Mr. Adair under an error so great as to imagine, that his end being the attainment of peace, would consecrate unconstitutional, and even unlawful means? Did Mr. Fox, after the return of Mr. Adair communicate to his friends the measure he is said to have taken without their knowledge? Did he leave them satisfied or dissatisfied with the reasons he assigned for taking it? Did they view his conduct in the same strong light in which Mr. Burke holds it up to public reprobation? Did Mr. Adair give to the Russian court any false or any dangerous information about the resources of the government, or the temper of the people? Had he discovered the secret designs of the English cabinet, and after discovering, did he betray more of them than a man quite unconnected with the members of administration, and honestly adverse to their mea-

sures, had a moral, or even a legal right to reveal? Did he encourage the court of Petersburgh to urge new and unjust demands, or furnish them with new and mischievous reasons, to enforce those upon which they had previously insisted? Did he only, as a private individual, point out in conversation to the ministers of Russia, such views of the subject in dispute as made peace more desirable to them than war? Did he by mere suggestions turn their attention towards conciliatory and reasonable terms, which the pride or the anger of the contending parties had caused them to overlook, and which if proposed by one of them were likely to be adopted by the other, after temperate and immediate discussions between the courts of St. Peterburgh and St. James's? Did he presume to answer for the parliamentary support of that very party with whom Mr. Fox had studiously avoided all direct and even indirect communication upon the subject? Or, did he merely communicate the sentiments and wishes of himself, and a few other individuals? Was he contented with mentioning Mr. Fox's name, and producing his cypher for something which the accuser of Mr. Fox has not explained by any circumstantial detail whatsoever, nor by any other specific property, than that in Mr. Burke's opinion the deed was almost treason, nor by any other visible effect, than that it frustrated some unknown objects, which the King's ambassador was endeavouring to attain?

The fact, of whatever kind it may have been, is said to have come within the knowledge of administration. But foul as may have been the channel

through which intelligence was conveyed to them, could that circumstance diminish the illegality of the transaction? Or did the intelligence itself throw such doubts upon the whole that ministers with all the advantages of official situation, and all the suggestions of crown lawyers, were at a loss to find any one political expedient, for turning it to any one political account? ἁπλοῦν τὸ δίκαιον, ῥάδιον τὸ ἀληθές, βραχὺς ὁ ἔλεγχος.*. If for prudential, or any other reasons, they did not choose to make the offenders amenable to law, would they have been tardy to assist in lowering the parliamentary and the popular importance of a man who had not only disappointed them in Russia, but, with a charge of treason hanging over his head, had ventured to oppose them about the affairs of France? If their own proceedings had been perfectly right, was it not their interest, as well as their duty, somehow or other to convince the public that Mr. Fox's conduct was entirely and unpardonably wrong? Was their delicacy to Mr. Fox so very great, or their confidence in Mr. Burke so very little, that they would have refused to furnish the latter with information, when he was labouring in their cause, and when the odium of employing it, if odium was to be expected rather than praise, would have fallen upon Mr. Burke, not upon themselves? In point of fact, then, ministers, who were acquainted with the whole truth, and who possessed the very amplest powers of proclaiming it with authority, and supporting it by evidence, at-

* Vid. Orat. Lycurg. contra Leocrat. p. 162. Reiske edit.

tempted nothing decisive for the purpose of punishment, and even alleged nothing distinct for the purpose of crimination. But what are we to think of Mr. Burke, who knew probably much less than ministers knew, and yet has said much more than persons better informed upon the subject, and more interested in it, were pleased to say?

The accusation is produced by Mr. Burke in 1796. The crime must have been committed several years before—when, I ask, and how, did Mr. Burke discover that crime? Why did he keep back so important a discovery upon our negociations with Russia, till Mr. Fox had displeased him by his politics on the affairs of France? Did Mr. Burke, or did he not, continue to act in parliament with Mr. Fox after the discovery had been made? Would he have been justified in keeping up any party connexion with a man whom he had strong reason only to suspect of such guilt, as is laid to his charge in the following words: "This proceeding of Mr. Fox," say he, "does not (as I conceive) amount to absolute high treason. Russia, though on bad terms, not having been then declaredly at war with this kingdom. But such a proceeding is, in law, not very remote from that offence, and is undoubtedly a most unconstitutional act, and a high treasonable misdemeanour."

It will be long before, upon the mere strength of Mr. Burke's representation, I shall suffer myself to consider Mr. Adair as a spy, or Mr. Fox as a traitor. But such imputations were well calculated to prepare the minds of Mr. Burke's readers for believing

other charges, which are afterwards brought forward.

In page 30, he accuses Mr. Fox of moving resolutions "tending to confirm the horrible tyranny and robbery of the French, and having for their drift the sacrifice of our own domestic dignity and safety, and the independency of Europe, to the support of the strange mixture of anarchy and tyranny prevailing in France, and called by Mr. Fox and his party, a government,"

In page 52, he says, that "under a specious appearance, not unfrequently put on by men of unscrupulous ambition, that of tenderness and compassion to the poor, Mr. Fox did his best to appeal to the meanest and most ignorant of the people on the merits of the war."

In page 59, he says, that "it would be shameful for any man above the vulgar, to shew so blind a partiality even to his own country, as Mr. Fox appeared on all occasions in the system of that year, to have shewn to France, and that if he had been minister, and proceeded on the principles laid down by himself, in Mr. Burke's belief there is little doubt that he would have been considered as the most criminal statesman that ever lived in this country."

In page 61, Mr. Fox is likened to Petion, and Brissot, because he "studiously confined his horror and reprobation to the massacres of the second of September, but passed over those of the tenth of August; and like the Brissotine faction condemned, not the deposition, or the proposed exile, or the

proposed perpetual imprisonment, but only the murder of the king."

I disdain to enter into any formal refutation of these charges. But I am at a loss to conceive how any man who, according to Mr. Burke's statement, countenanced the horrible tyranny and robbery of the French—who was more partial to a foreign country, than any enlightened man ought to be to his own—who acted under the specious pretences put on by men of unscrupulous ambition—who was indifferent to the massacre of the tenth of August, and the barbarous indignities offered to the French monarch before his murder, could, in Mr. Burke's estimation, "be a man born to be loved." Had so many years elapsed before Mr. Burke could discover that he had been the partisan and the friend of a Cataline? For of Catiline we read, "Quis clarioribus viris quodam tempore jucundior? quis civis meliorum partium aliquando? quis tetrior hostis huic civitati?" *

In page 59, Mr. Burke "thinks it possible that Mr. Fox would act and think quite in a different way, if he were in office. To be sure," says he, "some persons might try to excuse Mr. Fox, by pleading in his favour a total indifference to principle, but this (says Mr. Burke) I will not suppose: one may think better of Mr. Fox, and that from better, or from worse motives, he might change his mind on acquiring the favour of the crown." This concession is followed by pretty broad hints, that such a change was to be expected very faintly, and

* Cic. Orat. pro M. Coelio, par. 3.

by a tragical detail of the dreadful consequences that must flow from the absence of it.

In page 78, Mr. Burke allows "that the intentions of Mr. Fox and his associates may be pure, though they were in great error."

Under the impression however that their perseverance in error was not grossly improbable, in page 83, Mr. Burke says, that "the declared opinions and uniform line of conduct conformable to those opinions pursued by Mr. Fox, must become a matter of serious alarm if he should obtain a power at court, or in parliament, or in the nation at large, because he must be the most active and efficient member of any administration, and Mr. Burke adds, that a man or a set of men guided by such not dubious but delivered and avowed systems, principles, and maxims of politics, as to need a watch and check on them in the exercise of the highest power, ought, in Mr. Burke's opinion, to make every man who is not of the same principles a little cautious how he helps a man or a set of men to climb up to the highest authority.

In page 89, he says, that if "Mr. Fox be wedded, they who have been little satisfied with the proceedings of Mr. Pitt in the beginning of his administration, must be sensible that Mr. Fox's opinions and principles must be taken as his portion. That in Mr. Fox's train must also be taken the whole body of gentlemen who are pledged to him and to each other, and to their common politics and principles. That Mr. Burke believes that no king of Great Britain will ever adopt for his confidential

servants that body of gentlemen holding that body of principles.

Mr. Burke goes on to say, that if the present king or his successor should think fit to take that step, he apprehends a general discontent of those who, wish that this nation and Europe should continue in their present state, would ensue. A discontent which combined with the principles and progress of the new men in power, would shake this kingdom to its foundations."

Are these expressions qualified by occasional suppositions that Mr. Fox would in all probability change his opinions upon coming into office? Are they not rather accompanied by very intelligible intimations that we had little reason to look for such a change? Do they show merely the propriety and comparative expediency of excluding Mr. Fox from power in the whole reign of our present sovereign, and the whole reign of his successor? Do they not imply that Mr. Fox was utterly unworthy of any favour from his sovereign, any support from the aristocracy, or any confidence from the people? That if any sovereign should ever vouchsafe to employ Mr. Fox, men who wish things to continue as they are would be provoked to take up arms against the king and his servants? That Mr. Fox was likely to pursue such measures as would shake this kingdom to its foundations?

Let me not be told that such representations were mere effusions of anger, or mere flourishes of rhetoric—No: they were not spoken—but they were written—they issued from the press, and to

the press they were sent after much deliberation and in a very offensive form, though while they were in the press they might undergo many corrections. Did the editor forge the whole? Did he interpolate any part? Did he suppress any thing kind? Did he aggravate any thing severe? In the book itself all excuses of precipitation are excluded by the words of the author himself. In page 88, he ushers in his opinion of the consequences that were to flow from the admission of Mr. Fox to power, by telling us that "on a cool and dispassionate view of affairs in this time and country Mr. Pitt or Mr. Fox must be minister, and that to his sorrow they are irreconcileable." The succeeding parts of this paragraph seem to be written in the same cool and dispassionate view. The conclusion tells us explicitly and positively that, in "Mr. Burke's belief, no political conjecture can be more certain than this, that if the king or his successor should think fit to employ Mr. Fox and his partizans, such discontent among the well-wishers to the present state of this nation and of Europe would ensue, as, combined with the principles and progress of the new men in power, would shake this kingdom to its foundations."

I do not ask what portion of the public approved of Mr. Burke's letter, or how many persons may now remember it. But thus much I know, it was once read eagerly, it will be read hereafter, and with indifference no man of any party can read it. But that Mr. Burke wrote it, that he meant to publish it, that he suffered it to be published, that he

himself republished it, that he retracted it not, that he softened it not, were sufficient reasons for Mr. Fox to separate himself entirely from Mr. Burke. They are sufficient reasons with me too, for expressing as I have done to you my opinions upon the comparative merits of Mr. Burke and Mr. Fox, and they are sufficient also to justify me in setting very little value upon Mr. Burke's concession, that Mr. Fox was "a man born to be loved, and that he became by slow degrees the most brilliant and accomplished debater Mr. Burke had ever seen."

You and I, dear Sir, should not retain much love for the constitutional good nature, or the private virtues of any man, if we were convinced that his ambition was *unscrupulous*, that he felt no horror at the massacre of the tenth of August, that he had been almost a traitor, and that upon coming into office he would pursue such measures as must terminate in rebellion and revolution.

To Mr. Burke's political conjecture, so approaching to certainty as he describes it, we may oppose some plain facts.

Mr. Fox neither in parliament nor out of it, retracted any of the principles which he had really entertained and avowed upon the politics of France; and from *opinions* that were distinct from principles little danger could be apprehended.

Now Mr. Pitt within these four or five years entered into something like a negociation for coalescing with Mr. Fox; and whatsoever compromise they might have made from motives of prudence to avoid all discussions upon the causes of the late

war, neither of them was supposed to surrender his principles; nor can it be seriously believed by any man that Mr. Pitt viewed Mr. Fox's political judgments in the same odious light in which Mr. Burke represents them, or that Mr. Fox had bargained for not acting upon them so far as he thought them right, or that Mr. Pitt if he thought them incorrigibly and dangerously wrong, would have been weak enough to be a party in such a bargain.

Mr. Adair, a self-appointed ambassador to Petersburgh, and the reputed accomplice of Mr. Fox in "a high treasonable misdemeanour," was sent by one ministry as envoy to Vienna, and we may suppose that he has expiated his offences, or at least that like a sincere penitent he has not repeated them, because he continues in that important character with the approbation of his sovereign, and with the acquiescence it should seem of another ministry, whose general system of politics he would not support.

I have long had the happiness and the honour to call Mr. Adair my friend, and well do I remember the pangs which he suffered and the tears which he shed, when persons whom he had been accustomed to love and respect were torn asunder at the commencement of the late war. I know Mr. Adair's literary attainments, his various information, his constitutional principles,[42] his exquisite and amiable sensibility, his sincerity in private friendship, and his firmness in political attachment; and to his fiercest accusers I should say with confidence,

"However Heaven or fortune may cast his lot,

There lives in him, true to King George's throne,
A loyal, just, and upright gentleman."*

This declaration is extorted from me by the invidious introduction of Mr. Adair's name in the House of Lords, on the part of a peer who "called upon a noble relation of the person who sent him to explain some rumours respecting the supposed secret mission of Mr. Adair upon a former occasion to St. Petersburgh." Happy I was to observe that the good sense of the house immediately acquiesced in the declaration of Lord Holland, "that the insinuations upon the conduct of Mr. Fox had been so repeatedly proved to be absurd, that nothing but the perverse spirit, which had been manifested that night, could have again brought it up." I cannot however forget, dear Sir, that Mr. Burke was the first person to bring forward the odious charge against Mr. Fox and Mr. Adair formally and publicly, that it is recorded in his writings which are likely to be read by many distant generations, that a great officer of the crown has been pleased to introduce it gravely in parliament, and that a malignant spirit of party may hereafter induce other accusers to employ it to the discredit of both our friends.

Four most distinguished loyalists, most experienced statesmen, and most enlightened and honourable gentlemen, Mr. Windham, Lord Spencer, Lord Fitzwilliam, and Lord Grenville, have within

* Richard II.

this two years formed a part of the same administration not only with Mr. Fox himself, but with Mr. Fox's jacobinical confederate, (as in effect Mr. Burke describes him,) Lord Howick, and than Lord Howick, a better subject, a sounder patriot, and an honester man never set foot in the English parliament or the English court.

The Duke of Portland I grant did not enter into any conspiracy with the old or new associates of Mr. Fox, for giving effect to his jacobinical principles, and accomplishing Mr. Burke's prediction by the ruin of his country. I leave other men to praise the magnanimity and patience displayed by his Grace in renouncing for a season the profits of office, and in waiting for the opportunities which perhaps in his opinion were not very unlikely to occur, for employing his own talents and loyalty in the service of a new and more permanent administration. Virtue in the noble Duke certainly has not been left to its own reward.

If we ought to believe the reproaches so vehemently urged and so widely disseminated, no predilection for political theories can even extenuate the rashness of Mr. Fox. If we ought to disbelieve them, no difference in political opinion can justify the acrimony of Mr. Burke. From him who professed to write gravely upon subjects so grave as the interests of society, the principles of morality, and the sanctions of religion, we have a right to expect deliberation at least, if not candour, before he brandishes the weapons of accusation; and even to the freedom which a sense of our common imper-

fections induces us to pardon in public debate, some boundaries are prescribed by the common sympathies and usages of civilized man.

After the outrages to which I have adverted, Mr. Fox himself stood in little need of any concession or any praise from Mr. Burke; and the friends of Mr. Fox as will presently appear, had little cause to be pleased with a second instance of commendation for which Mr. Burke has lately been made responsible, and in the republication of which a sort of claim appears to have been set up for the credit not only of his taste but of his justice, and perhaps his placability.

When Mr. Burke mentioned Mr. Fox as one "who by slow degrees had become the most brilliant and accomplished debater he had ever seen," he spoke not, and he must have been conscious of not speaking the whole truth. A man so conversant as the philosophical writer upon the sublime and beautiful has shewn himself, in exploring the powers of words to convey ideas under all their possible modifications of precision and laxity, amplification and compression, meridian brightness and twilight dimness, must have known that the epithets "most brilliant and accomplished," did not make the term "debater," co-extensive with the aggregate of Mr. Fox's merit as a public speaker. He must have known that a Dunning, a Thurlow, and a North, might with consummate propriety have been described as accomplished and most powerful debaters. He must have known that he had himself seen in Mr.

Sheridan and Mr. Pitt, debaters more brilliant if not more accomplished than Mr. Fox was, according to the obvious and established signification of the words. He must have known that, in the conceptions of such enlightened and experienced observers as himself, brilliancy was not the marked excellence of Mr. Fox's speaking. He must have known that by the slightest touch of his wand, the debater in the twinkling of an eye might have been transformed into an orator. He must have known that in the angry conflicts of party, there were persons who would gladly seize upon any expression which seemed to depress the merits of Mr. Fox below their proper standard. He must have known that long observation and advanced age would give additional sanction to any judgments which he might himself pass upon his former associate, when ordinary men were likely to be surprised and charmed even at the smallest pittance of praise bestowed by him after his unhappy difference with Mr. Fox. But when political hatred had deepened the gloom which intellectual competition often spreads over the mind of man—when the splendour of Mr. Fox's name had begun to emerge from the obscurity in which it had been industriously and mischievously enveloped—when the sun of Mr. Burke's glory had in some measure ceased to be gazed at with admiration and fondness for the radiance and warmth which it had formerly diffused—when it was descending with unexpected rapidity down the horizon, and was likely soon to set in the darkness of the grave—at such a season

was that wonderful man Mr. Burke more disposed to degrade Mr. Fox by what he suppressed, than to honour him by what he acknowledged. Yes, dear Sir, he was actuated by the same narrow and illiberal jealousy which had induced some anonymous but able writer in the Annual Register,[43] to notice very slightly and very coolly a most impressive speech delivered by Mr. Sheridan on the trial of Mr. Hastings. He descended to the low and inglorious artifice of "damning by faint praise," on a subject where perfect fear, mingled with imperfect shame, restrained him from venturing upon open assault. He seems to have looked upon commendation largely given to Mr. Fox, as a reward indirectly filched from his own pretensions. He scantily, and perhaps reluctantly, bore testimony to the intellectual powers of a senator who had never been tardy or insidious in applauding other speakers, and who had ascribed much of his own political knowledge, and many of his own oratorical excellencies to the aid of Mr. Burke's instructions and the influence of his example.

I have often admired Mr. Burke when he "fulmined over Greece" against jacobins and scorners, and knowing him not to "be in sport," I have sometimes been disposed to forgive his want of caution when he "scattered firebrands" among the innocent as well as among the guilty. But why did Atticus give way to literary jealousy, against one whom he knew to be completely exempt from it? Mr. Burke had himself been the hearer and the ally of Mr. Fox in many debates upon many subjects, and,

whether right or wrong upon the general merits of the question, he seldom failed to give some proofs of a most active and richly-stored understanding. Mr. Burke was himself an orator of the highest order, and would he have been content to be called "a most brilliant and accomplished debater?"[44] Would he have discerned much candour or much sagacity in any critic who should have attempted to justify the application of the term, by saying that promptness in reply, dexterity in evasion, a keen perception of the strong and of the vulnerable parts in the speech of an opponent, quickness in anticipating objections and sturdiness in repelling them, were the characteristics of a great debater, and that practice would ultimately bring them within his reach? No. The experience of Mr. Burke as an orator must have told him that Mr. Fox was more than a great debater, and the common sense of other men will tell them that to become even a debater of such a kind and in such a degree, something more and something better was requisite than long use. We shall find it in the Divite vena ingenii to which use was superadded.

In the opinion of Mr. Burke, the fame of Mr. Fox as a brilliant and accomplished debater, Crevit occulto velut arbor ævo.* But if slowness be measured by comparison with the progress of many other men, the reputation of Mr. Fox as a great speaker struck its root deeply, spread its branches widely, and bore fruit abundantly, by degrees that

* Horace, lib. i. Carmen 12.

were *not* slow. The state of public affairs, the dispute with America, the comprehensive and important questions to which that dispute gave rise, and in the discussion of which Mr. Fox without very frequent or very marked inferiority to Mr. Burke co-operated with him, assisted probably and accelerated the growth of Mr. Fox's powers, not merely as a debater but as an orator. Whatsoever may be my opinion upon the comparative excellencies of Mr. Pitt and Mr. Fox as great speakers, the progress of Mr. Pitt as a debater was I think equally rapid, and perhaps it was even more so in consequence of the arduous part he had to sustain against a phalanx of such assailants as Mr. Grey, Mr. Sheridan, Lord North, Mr. Fox, and Mr. Burke. But no man, however prejudiced, who attended to Mr. Fox's speeches, from his first appearance in parliament to the conclusion of the American war discerned in them, "Illud ingeniorum velut præcox genus, quod non temere unquam pervenit ad frugem." We may say indeed, without any gross partiality, "neque stabat profectus, neque admiratio decrescebat."*

I am not disposed to dispute about the import of mere words, unless their ambiguity seem to be studied for some purpose of which I do not approve; and that Mr. Burke used such words about Mr. Fox "in a work written after their unhappy difference," is the very circumstance which induces me to point out such ambiguity and to defeat such purpose.

* Quintilian, lib. i. cap. 3.

If those words had been used in conversation only, they might have been accompanied by other terms of praise, which might have protected them from misapprehension; but they were written, it seems, they were published, and therefore they have all the external as well as internal evidences of deliberation. By the author of the sketch they were selected for republication, and therefore, he too must be considered as acting deliberately—I know not the work in which they are to be found. But I give Mr. Burke's panegyrist the credit of fidelity in his quotation, and as he has not availed himself of any other words, to correct the bad effects of those which he has brought forward, I suppose that he met with none.

When Mr. Burke spoke of "slow degrees," he evidently meant, that as Mr. Fox spoke oftener, he spoke better. Thus much will be granted without prejudice to Mr. Fox's abilities, because more can be said, and it might also have been granted without prejudice to Mr. Burke's candour, if he had been disposed to say more. In eloquence, doubtless, as in politics, in literature, in the sciences, and all other iutellectual attainments, the advantages of exercise are considerable, and Mr. Fox, in common with other speakers, had a considerable share in those advantages. He must have acquired greater skill in defence, greater confidence in attack, quicker views of general and particular questions, greater copiousness and greater precision of language, and a more ready adaptation of his matter to the temper of his audience, the characters of his opponents,

and the peculiar exigences of times and seasons. But for the various and splendid powers which Mr. Fox displayed upon so many subjects, and against so many antagonists, and during so many years, he was not less indebted, surely, to a native strength of understanding, to a liberal education, to extensive reading, to habitual reflection, to familiar intercourse with the learned in all sciences, and the wise in many nations, and let me add, to an ardent inextinguishable love of liberty, justice, and humanity, which he esteemed the choicest blessings of man and the noblest gifts of God. In truth, dear Sir, the intellectual and the moral properties of his mind, as I have before remarked to you, acted upon each other. His solicitude for the welfare of his country and of mankind led him to explore all the causes by which it is impeded or promoted, and his knowledge of those causes in its turn increased that solicitude. When the welfare of thousands and myriads depended upon the guidance of truth, he was upon the alert to chace her, whether she were to be found in her wonted habitations, or her most secret haunts, in the highway of generalities, or the bye-paths of particulars, upon the summits of science, or in the vale of common-life, in the gloomy labyrinths of negociation, or the rugged thickets of debate.

If, then, readiness in the application of general principles to particular occasions—if the fruits of long and laborious research into the usages of parliament, into the spirit of jurisprudence in our own and foreign countries, into the laws of nations, into

the national character and national resources of allies and foes, into the opinions, practices, and memorable sayings[45] of the most renowned statesmen in all governments, popular and regal, and all ages, ancient and modern, and into the causes and circumstances of all the great events by which great empires have been raised or depressed—if copiousness, and even felicity in illustrating—if earnestness in enforcing—if vehemence in refuting; if plainness of language without vulgarity, and grandeur without bombast: if these be the constituents of oratory, Mr. Fox has a most indisputable claim to the name of an orator. Whether, indeed, the merit of Mr. Fox be measured by his ability to enlighten a senate, or assist in a cabinet, to accommodate speculation to action, or combine utility with truth, we see the same unclouded perspicuity in his statements, the same undisturbed regularity in his reasonings—the same peculiar and varied colours in his diction, and the same correctness, fertility, and originality in his conceptions. Yes, he was a wonderful statesman, and in perseverance, patience, placability, and probity, a most wonderful man.

We cannot forget the lofty tone of triumph, the dexterous mis-statements, the invidious exaggerations and pointed sarcasms to which Mr. Pitt sometimes had recourse in the conflicts of parliament. But in no one instance which occurs to my memory, did this extraordinary man speak of Mr. Fox as merely an excellent debater. Though a monopolist of power, Mr. Pitt was not a pilferer of fame. In the hearing of all parties, he frequently professed

to admire, while he fiercely opposed, his mighty rival, and in the society of his private friends, if I am not much misinformed, he sincerely did justice to those talents which were congenial to his own, to some virtues, which perhaps were not, and to all that assemblage of excellencies, which conciliated the affections of so many adherents, and softened, it may be, the antipathy of so many enemies. To the honour of Mr. Fox, also, be it spoken, that he argumentatively, and sometimes impatiently resisted, the declamations of partizans, and the refinements of critics, when they appeared to him to undervalue the abilities of Mr. Pitt. I have been present at such conversations, and taken, let me confess, an active part in them against our friend.

In the happy application of sound, solemn, saintly morality to political subjects, in variety of allusion, in richness of imagery, in copiousness and magnificence of diction, and in all the higher graces which invention, itself the highest faculty of the human mind, can bestow upon human compositions, the eloquence of Mr. Burke never has been, nor, I believe, ever will be excelled. At the same time I should not be conscious of doing him any injustice if I were to say, that he wandered too suddenly and too often from his subject; that he leaped too far beyond the bounds of decorum in his reproaches, and of probability in his descriptions; that he availed himself too seldom of the unexpected, and sometimes unpleasant incidents, which in a popular assembly should induce a speaker desirous of popularity to retreat, or to pause; that he sympathized

too little with the prejudices and humours of his audience; that he soared too much and too long above the level of their ordinary conceptions, and therefore, that he was less successful than Mr. Fox is supposed to have been in debate, as the word is generally and properly employed. But this very distinction implies, that in addition to the argumentative talents which mark and even constitute a powerful debater, other and great qualifications are necessary to make a great speaker; and my complaint is, that Mr. Burke has been penurious of praise to those qualifications, as they really existed in his great contemporary.

The province of a debater is to convince rather than to persuade, to prove than to adorn. But were these the sole, or upon some occasions even the leading properties of Mr. Fox's speeches? The office of an orator, like that of the poet described by Horace, is, "et prodesse, et delectare." But do we not find both these properties in the sentiments and language of Mr. Fox, when great subjects roused him to great exertions; when, having satisfied the judgment, he proceeded to exercise his mastery over the passions; when he unmasked imposture to make it despised; when he pleaded for misery to make it pitied; when he asserted the eternal claims of justice; when in the liveliest colours he painted the blessings of liberty and peace, and when he held up the crimes of tyranny to our detestation, or the ravages of war to our compassion and our fears? Atchievements of this kind are beyond the power of a mere debater, and he that remem-

bers the effects wrought upon himself, or witnessed the eager curiosity and varied emotions of other men while Mr. Fox was speaking,[46] will readily allow that such atchievements were not beyond the reach of his mind. Some speakers delight the ear, others captivate the imagination; but to win the heart by simplicity of manner, to warm it by earnestness of appeal, to stir up one strong feeling after another in quick succession, and to stretch none beyond their proper tone; these are excellencies[47] in regard to which Mr. Fox had little to dread from comparison with any orator of any age.

Upon the evidence adduced for facts, and the arguments employed to develope their properties, our reason is nearly at all seasons in a state of equal preparation to form a right estimate. Distance of time, indeed, if it make any difference, is favourable to our decisions, because subsequent events may have arisen to throw new light upon the origin and consequences of those facts, or because our minds may have been gradually set free from those latent ties by which the occurrences of the day are entwined, more or less, with our partialities, antipathies, hopes, and fears. In all such operations of the understanding, the speeches which Mr. Fox delivered long ago, may be criticised with great advantage to his character as a debater.

But upon topics which more immediately find their way to our passions, contiguity in time, if I may without pedantry use the language of Mr. Hume, is accompanied by efficacy more direct, indeed, and more intense, but much more transient.

While some great and long-expected event is suspended, or some important interest is at stake, we are impressed instantaneously by the slightest as well as the weightiest considerations which a skilful orator may set before us. After those events have gone by, or those interests have ceased to be implicated in the discussions of any political question, our attention languishes, and our indifference generally passes from the question itself, to every object associated with it in the speeches, the writings, or even the actions of men. But wheresoever this is not the case—where after a lapse of time, after the cessation of all personal concern, and in the absence of immediate sympathy with a speaker of an audience, we feel as it were his ideal presence—where the anticipations of memory furnish gratifications not less enchanting than novelty itself—where the illusions of imagination convert the past into the present—where the affections preserve a kind of elastic force after impulse upon impulse, and vibrate again and again in the same direction, with undiminished vigour, can we require a more decisive proof of genius in the orator, who can at will thus call into action every strong and every agreeable emotion? Let the merits of Mr. Fox's ablest orations be tried by this test. For my part, when I look into them by mere chance, I cannot quit the mingled nourishment and luxury of the intellectual repast, till I come to the close of the banquet. Laying before me clearly all the links between cause and effect; opening up to me all the principles by which the most momentous concerns of life are go-

verned; abounding with inartificial, but most impassioned addresses to the best feelings of the soul, and elevated by the proper application of those hallowed maxims, which, if introduced without the rant of fanaticism, or the whine of hypocrisy, cannot fail to remind us that we are moral beings, destined to act and to be acted upon amidst other beings endowed with the same faculties and subjected to the same responsibility, those speeches both instruct and interest me now, not less than they instructed and interested me upon the first perusal when many external circumstances might be supposed to concur in accelerating and augmenting their effect.

I have conversed with other men, who have acknowledged their experience to be similar to my own. Perhaps they would liken the speeches of Mr. Fox to some fine pieces of music,[48] which upon the first hearing, produce a sort of confused pleasure from their grandeur, or a faint one from their simplicity, and which, after some interval, are, upon a second and a third hearing, more distinctly understood and more exquisitely relished. But if I were permitted to express the entire and peculiar influence of them upon my own mind, I should venture to have recourse to other imagery—I should say, that they carry with them, at once, the freshnsss of a blossom and the mellowness of fruit.

Distinguished by other, and it may be, not inferior beauties, some of Mr. Burke's speeches in their nobler parts affect me nearly in the same manner and to the same degree. I will not, therefore,

wrong that wonderful man, by calling him an ingenious, or animated, or gorgeous declaimer. No —Mr. Burke was an orator—Mr. Burke was born to be admired at home and abroad, and by friends and foes. The happiest effusions of Mr. Burke's eloquence, prepared by judicious correction for the press,[49] are not far removed from perfection,[50] and they deserve to be called, in the well-known language of Thucydides:

"Κτήματα ἐς αἰεὶ μᾶλλον ἢ ἀγωνίσματα ἐς τὸ παραχρῆμα ἀκούειν."
A. κγ. 55.

The mantle of Mr. Burke was of celestial texture, and it may serve to deck out some future claimant not unworthy of inheriting the precious insigne, and trained to the sacred office in the schools of the prophets—but where shall we find the favoured mortal, upon whom a double portion of Mr. Burke's spirit may be expected to descend?

If I had been told, that Mr. Burke had described Mr. Fox as a most accomplished and brilliant debater, in conversation only, and had used no other terms of praise, I should have thought of his words as I now think, and for the sake of the speaker I should not have produced them before the public, without the most urgent and palpable necessity. Even in writing to you, dear Sir, I should not have disturbed the manes of Mr. Burke, if they had not been invoked to descend from that glorified state,* to which some Platonists supposed that the souls of illustrious men were exalted immediately after

* Vid. Maxim. Tyr. Dissertation 27, and the Notes.

death, and had not been employed in performing the part of a tutelary genius to the reputation of Mr. Fox.

But, Amicus Foxius, veritas etiam magis Amica, and for the strictures which have fallen from my pen, the responsibility, in the first instance, lies with that person, who, depending upon the merits of a good cause, or on his own gigantic strength and magic skill to support a bad one, has challenged the severities of investigation.

It were useless, and perhaps unbecoming, to indulge any conjectures upon the motives which led the writer of the sketch in question to look for any sanction to his own present opinions of Mr. Fox, in the qualified or unqualified concurrence of Mr. Burke. Great, indeed, are the talents of both Mr. Burke and his encomiast, and to both should I have listened most attentively and most respectfully, in any honest application of those talents to great subjects. Upon any other occasion, I might have been pleased with that encomiast on his making those acknowledgments which were once made by Mr. Fox, for the instruction and delight, which, in common with every scholar of every party, he may have himself derived from the speeches and the writings of Mr. Burke. Reasons he may have for professing to make a common cause with that extraordinary man upon the demerits of French politics; but surely upon the merits of English eloquence, there is no visible temptation to seduce him from rigorous and uniform impartiality, even into seeming or momentary compliance with the lurking prejudices

of such a favourite as Mr. Burke now appears to be in his estimation.

I condemn not Mr. Burke, nor any other man, who has undergone a real "change in the general complexion of his mind,"* or a change "in the opinions" which he professes to hold, and endeavours to disseminate—even a change so great as to raise suspicion in common observers, that he is ashamed of his former exertions for the people." I shall endeavour to vindicate Mr. Burke from a part of that charge against the reviewer, and I should be very reluctant indeed to alledge a similar charge against other men. The reasons for their change may be very solid—the motives to it may be honourable—the effects of it may be useful at once to the individuals and to the community.

It is unjust to say that inconsistency is, in all cases, the infallible criterion of insincerity—it is unjust to tie down manhood to those tenets which have been ingenuously avowed, but perhaps hastily adopted, in youth—it is unjust to shackle men of genius with any other restraints than those which are necessary for the observance of decorum, honour, and the strictest fidelity—it is unjust to debar any human beings from the moral or intellectual benefits which may arise from greater accuracy of information, or greater maturity of judgment—it is flagrantly unjust to blame them for discharging those new duties which are really imposed upon their

* See the Monthly Review, to be quoted hereafter in the Notes.

consciences, by new and disinterested views of controverted and important questions. But conversion would not be disgraced by its circumstancial accompaniments, if converts were to pause a little, before they pronounce the whole truth to lie upon one side only—if, reflecting upon their own situation, and communing with their own hearts, they should be impressed with an humble and fearful sense of that fallibility which is inseparable from our common nature—if they would vouchsafe sometimes to separate the proofs and the consequences of opinions, from the moral characters of the persons who hold them—if they would extend to other men the same credit which they claim to themselves, for sincerity of conviction, and uprightness of intention—if they would avoid every unseemly appearance of that versatility which for the sake of popularity is content to exchange sweet for bitter and bitter for sweet, and of that shrewdness, which, for the sake of convenience, is prepared occasionally to halt between right and wrong—and above all, if they were to be very wary in suspecting, and very tender in censuring, any unfortunate followers, who may have been swayed by their arguments to adopt their opinions, and to imitate their example. Such candour would atone for many of their former errors, and such prudence might serve to restrain their present and their future zeal.

The sketch of Mr. Fox's character which I mentioned to you, if considered as a literary composition, is indisputably worthy of the writer to whom it has been assigned by common fame. The general

excellence of it consists in the judicious selection of topics, in the luminous arrangement of the matter, and in diction[51] most agreeably diversified, and most exquisitely polished. It is calm without languor, flowing without redundance, and elegant without gaudiness. But the particular passages to which I have adverted, were evidently introduced with great deliberation—they have produced, and were intended to produce great effect; and as the judgment which Mr. Burke passed upon Mr. Fox as a debater is not accompanied by any mark of dissent or disapprobation, the well-wishers of Mr. Fox may be excused for discussing the real import of the compliment paid to him upon this occasion by Mr. Burke. To me, indeed, it appears probable that the more judicious admirers even of Mr. Burke himself, will not be very highly pleased by the republication of a remark which reflects very little credit upon the magnanimity of him who made, or the discretion of him who would disseminate it. The writer to whom I allude, has himself shewn Mr. Fox to have been more than "a brilliant and accomplished debater," and his manner of shewing it entitles him to my praise, for the clearness of his discrimination, and the beauty of his language—I would therefore cherish the hope that he remembered what he does not entirely approve, and that he has recorded what he would not deign to imitate. But I cannot suffer the charms of his style, or the celebrity of his name, to give undue weight to the words he has selected from the writings of another man, or eventually to injure that character which,

according to his own words, "he has delineated with accuracy and fidelity." If he meant to exalt Mr. Burke, as I suspect he did, his attempt was not wise; if he meant to lower Mr. Fox, as I earnestly hope he did not, it was not good. If his sensibility should not for once quite overpower his sagacity, I think that, upon reviewing the whole of his statement, he can hardly fail to discover some traces of dissimilitude between the sentiments of Mr. Burke, and his own. Was Mr. Fox a most brilliant and accomplished debater only? Or, was he in other respects a great speaker? If Mr. Burke be right, the author of the sketch has ascribed to Mr. Fox too many excellencies—if that author be not wrong, Mr. Burke has ascribed to him too few. Why then did the learned author of the sketch run the hazard of counteracting the stronger praise which was bestowed by himself, by the introduction of the weaker praise, which was bestowed by Mr. Burke?

Thus, dear Sir, I have endeavoured to discharge a necessary, but most painful duty. Painful indeed it has been for me to assume the language of controversy, especially as in assuming it I have been compelled to lay open the imperfections of the dead, and to censure, but I hope without asperity, the imprudence of one who is alive. But it was necesfor me to develope very fully, all the latent properties of an expression, which, having been used by one celebrated man, and selected for republication by another, might ensnare common readers into imperfect or erroneous conceptions of the uncommon

talents by which Mr. Fox was distinguished as a public speaker. The context itself, as I have already observed to you, contains sufficient matter to refute the insinuation, if they be diligently compared. But ordinary readers are not always upon the alert to make such comparisons, and the insinuation, protected by the high authority of the speaker, and the seeming assent of the sketch-writer, is quite as likely to sink into the memory, and vibrate upon the ear, as the context.

If these strictures should ever be read by the distinguished person whom I believe to be the author of the sketch, let him not impute them to the prejudices of a partizan, or the acrimony of an enemy. His present partiality in favour of Mr. Burke's politics is much greater than my own. His habitual admiration of Mr. Burke's talents is not. The commendation he has lately bestowed upon Mr. Fox, and upon one who inherits all his virtues, and no inconsiderable share of his abilities, is, I am convinced, sincere. He is himself a scholar of no ordinary class, and a philosopher of the highest. In the courts of justice he has already shewn himself to be a most accomplished debater, and were he in Parliament, he would rise by rapid degrees to the most honourable situation among the orators who have survived Mr. Pitt, Mr. Burke, and Mr. Fox.

The frequent, and indeed unavoidable mention of Mr. Burke's behaviour to Mr. Fox, makes it very necessary for me to communicate the opinion I entertain of his political conduct at the time of a separation, which you, dear Sir, and I, shall ever de-

plore as an event most afflictive to the feelings of our departed friend.

In the controversy which arose about a late revolution, Mr. Burke is entitled to my gratitude and my respect, for spreading before the world many adamantine and imperishable truths, which are quite worthy of protection from his zeal, and embellishment from his eloquence—many, which unfold the secret springs of human action, and their effects upon human happiness—many, in which he unites the ready discernment of a statesman with the profound views of a philosopher—many, which at all times, and in all countries, must deserve the serious consideration of all governors and all subjects—many, which at a most important crisis, might have averted the outrages and the calamities we have to lament in a neighbouring kingdom—many, which the principles of our own constitution amply justified, and in which the good morals and the good order of society were interested, deeply and permanently. But I contend, that in a cause to which judicious and temperate management would have ensured success, he was impatient of contradiction, dogmatical in assertion, and intolerant in spirit—that his judgment and his imagination were under the tyranny of his undisciplined and angry passions—that he infused into his writings the same unexampled and unrelenting violence which burst forth in his speeches—that his raillery was sometimes tainted with the venom of vulgar malignity, his statements encumbered with hideous exaggeration, and his metaphors[52] bloated and disfigured by the

introduction of the most loathsome images[53]—that in describing the primary agents in the French revolution, he uniformly confounded their better and their worse qualities in one dark and wild chaos of invective—that, astounded with a spectacle of "confusion heaped upon confusion, to which war seemed a civil game," with the wreck of all the materials which hold together the fabric of government, and the extinction of all the charities which sweeten private life, he descried very dimly the intenseness, direction, and numbers of those powers, which enable states, like Antæus, to recover from their fall, and which if a Hercules had been at hand to struggle with them, should have been combated by other stratagems of skill, and other feats of prowess, than those which we have witnessed—that in his general reasonings, he frequently lost sight of those intricate causes in the moral world, by which great and rapid evil is sometimes made the precursor of great and progressive good—that in treating of French politics he foresaw, indeed, much, but predicted[54] far too much—that in adverting to English politics, he often applied very ill, what he expressed very well, and inflamed,[55] where he should have been content to instruct and to warn—that some of the principles he then endeavoured to disseminate were notoriously at variance with those upon which he had long and avowedly given his support to many of his wise and virtuous countrymen—that the unexpected, and almost unparalleled change in public circumstances, was not sufficient to warrant the undistinguishing and total change which marked his public ha-

rangues, and his public conduct—that in his pamphleteering attack upon the late Duke of Bedford, he trampled on the ashes of the dead, in order to wreak his spleen against the living—that he played off the most formidable artillery of argument and ridicule that ever was pointed against the interests of that aristocracy which he had undertaken to defend; and that loosely, but insidiously appealing to history for the proof of facts which historians have no where recorded, he for once was guilty of calumnies which an acute and elegant critic suspected upon the first glance, and traced through all the ramifications of rhetorical mistatement to their root, in the want, "not of veracity, but of other qualities, the opposite of which are as adverse to truth as falsehood itself, in that levity and rashness of assertion which may be as uniform as fraud, and therefore as constantly repugnant to truth,"[56]—that he was insolent and vindictive against several of the old whigs, such as you and I are, and severe even to savage scurrility against all the new—that he insulted and exasperated, instead of endeavouring to enlighten and conciliate, the lower ranks of the community—that he threw an artificial, sombrous, sullen air of mystery,[57] over those rules of government which every man is authorised to explore coolly and respectfully, while he is required to observe them, and which, if pourtrayed by the mighty genius of Mr. Burke in his calmer hours, would have appeared reasonable, equitable, and amiable, to every reader of every class—that he laboured to extort obedience by compulsion, where it might have

been won from conviction—that he laid rather too great a stress upon those privileges which uphold, I grant, and endear, as well as adorn society, and too little, upon those popular rights which are essential, not merely to the improvement or to the preservation, but to the very existence of all that is intelligible, or attainable, or desirable, in genuine freedom. Other duties, I grant, were to be done by Mr. Burke, and many of them were done with great ability, when the times loudly called for them —but the duty of explaining and vindicating those rights ought not to have been left undone, and the spur, as it is called, of the occasion, was not only a very unsatisfactory, but in my view of certain concomitant circumstances, a very suspicious excuse for neglecting it.

New connexions, new panegyrists, and new rewards, will now and then enable us to account for the reiterated profession of new opinions, or new, elaborate, and fallacious modifications of old ones. Proselytes, dear Sir, after a few misgivings, soon glow with the real or pretended fervour of zealots. Zealots, expecting opposition, cool into determined bigots, and bigots meeting with it, rankle into persecutors. In order to obtain protection against the indignation of the persons whom they have deserted, they adopt every prejudice, inflame every passion, and minister indiscriminately to every good and every bad purpose of the party to whom they have delivered over their interests and their honour. But if they happen to be gifted with keen sensibility, most salutary is the warning which they furnish

to men who are yet hesitating on the threshhold of guilt: for, in sudden wealth, or fleeting popularity, they receive a very precarious recompence for the want of those gratifications which honest ambition had formerly supplied. Impatient of that dreary vacuity, which in active minds follows the loss of their wonted employments, they prowl for some prey to their growing appetite for mischief, and discerning it in the associates whose regard they suppose to be alienated, they spring with equal fury upon their defects and their accomplishments, their failings and their virtues. They are too stiffnecked to propose any reasonable terms of accommodation, and too high-crested to accept forgiveness, even when they are required to forgive—they brood in silence over the wrongs they have committed, and the retaliations they have provoked—they find themselves alike insensible to the comforts of solitude, and the joys of society—they vainly call to their aid the visions of self-delusion, and the blandishments of flattery, when they would bar the avenues of their hearts against the intrusions of remorse—they hate where they are conscious of not being loved, and try without success to love, where they are doubtful how long they may be themselves esteemed—worn out at last with unceasing inquietude, they are numbered among the dead, with scarcely one sigh from those whom they have abandoned, or one blessing from those whom they have courted. Such are the effects of a wounded spirit, and happy it is for us to remember, that Mr. Fox neither felt, nor deserved to feel them.

It is not for such men as Mr. Fox and Mr. Pitt, to spend their last breath in dying speeches and confessions—They had weightier duties to perform, and I trust that with a deep and composed sense of their imperfections and their accountableness, they performed those duties well. But if either of them had chanced to be on the brink of dissolution in the presence of the other, I hope, and I believe too, that his lips in unison with his heart, would have pronounced an affectionate farewell.

In regard to the behaviour of Mr. Burke to Mr. Fox, for some time before his death, take, dear Sir, if you please, the full benefit of such pleas as are ordinarily admitted for difference of temper, opinion, and voluntary, or involuntary situation. Grant the largest indulgence which withont fatuity or hypocrisy can be granted to the eccentricities of genius, the blindness of party, the ardour of recent conversion, and the impetuosity of enthusiasm. But mark, I beseech you, the behaviour of the two men —Mr. Burke not only ceased to act with Mr. Fox, but had begun, aye, and continued to vilify him—Mr. Fox, on the other hand, continued to speak with tenderness of Mr. Burke's former friendship in public and in private; he deplored, but rarely censured the political change of Mr. Burke; he praised Mr. Burke's intellectual endowments, mourned for his domestic loss, and left, as long as was possible, an opening for personal reconciliation. Closed it was not, till the charge of a "high treasonable misdemeanor in Russia," demonstrated the bitterness of Mr. Burke's resentment, and the restlessness of his

hostility. That charity, which had endured many other things, could not patiently endure this one most deliberate wrong.

You, dear Sir, and I, and other consistent friends of Mr. Fox, have not memories so bedimmed, or feelings so benumbed, as never to bestow a thought upon the impressions which such ungracious treatment made on his sensibility. We do not, indeed, take any common interest in the triumphs of that ingenuity which spreads a many-coloured varnish of conjectures and distinctions, and qualifications, over the backslidings of bad men—of trimmers, I mean, who in all changes of opinion, leer most vigilantly upon all chances of preferment—or of sophists both in theory and in practice, who whether they stir up the rude storm, or partake the soft gale, are never at a loss for reasons to justify themselves to themselves, and to a shameless crew of apologists, lying upon the watch for opportunities to be imitators—or, of hirelings, who with equal obsequiousness, and with equal importunity, tender their services to "two masters"—or of seers, who without a blush, "can prophecy things smooth," or things rough, at the nod of their employers, and without a pang, bow the knee to "God and Mammon"—but we do feel a common indignation, against rudeness leagued with implacability. To our judgments, the sprinklings of praise which drop from caprice in a fit of indolence, or envy in a state of confirmed ill-will, must now and then betray unequivocal marks of the taint contracted at their source.

You, dear Sir, may be inclined to ask, as other persons have often asked from other motives, was not Mr. Fox ambitious? Yes, I shall answer without hesitation, and he may be said to have been so almost from the cradle to the grave. But ambition in him[58] was not that head-strong passion which tosses away all considerations of duty and decorum —which hails a friend only in a partizan—which crouches to the mighty only that it may trample upon the feeble—which truckles for office by the barter of principle, and varies with the varying opinions and humours of unfeeling rulers, and an unthinking populace. He was led to look up to high employments in the state by those early and strong associations which distinguish and perhaps produce the characters of individuals—by the example of a revered father, by the influence of education, by splendid connexions upon his first entrance into the bustle of politics, and by the inward consciousness of talents adapted to exigencies the most trying, and situations the most elevated. He aspired to power because power would open to him a wider range for the exercise of wisdom and benevolence. He valued fame,[59] because fame is the legitimate reward of extraordinary merit. But neither power nor fame carried with them irresistible charms to his mind, when they were to be purchased by the surrender of private honour, or by the dissimulation of his real thoughts upon the tendency of public measures to the public good.

When he was engaged in opposition, how meekly did he bear that ascendancy, which it was impossi-

ble for him not to gain by the superiority of his abilities, and the dignity of his character! But the most decisive proof of his moderation is, that when employed as a servant of the crown, he was content to bear the chief responsibility for measures without vaulting into the chief official situation. He humbled, but did not abase himself, and for the loss of exaltation to the highest ministerial power, he was abundantly repaid by the esteem of his colleagues, and the confidence of his party.

Whatsoever difficulties may formerly have perplexed us while our judgment was oppressed by our fears, we can now be at no loss to account for the singularity of his conduct amidst those tempestuous scenes, in which the follies and the crimes of which human nature is capable burst upon our notice in their fullest magnitude and most shocking deformity. While many of his well-wishers and opponents were scared by one common panic—while his illustrious rival seemed in some instances to temporise for the sake of power—and while for the sake of popularity, which soon passed away, he who had once been the friend of his bosom stooped to many of the meannesses, and plunged into many of the extravagancies by which recent conversion would make its zeal the measure of its sincerity, Mr. Fox continued to reason from the treasures of his own profound knowledge, and to act from the dictates of his own unbiassed judgment. At a most gloomy and portentous crisis, and with the prospect of political odium, and even personal danger, he addressed himself to his misguided constituents, to an incensed

parliament, and to a terrified people. He argued, he supplicated, he warned, he ventured almost to predict.[60] But he never confounded the use of liberty with the abuse; never seized upon sudden and fleeting prejudices in order to undermine ancient and solid principles; never provoked outrages for the purpose of condemning and retaliating them, nor attempted to extenuate those overt-acts, of injustice and cruelty which disgraced a cause not palpably bad at its commencement—overt-acts you will observe, which themselves owed their rise in too many instances to unwise and intemperate opposition, and which eventually baffled the expectation of many wise and virtuous men[61] who had for a time supported that cause, but who ceased to support it when it had furnished a pretext for those crimes. If indeed the destiny of Europe (and for once let me use this phrase) had permitted his counsels to be adopted in the spirit which really suggested them to his mind, and for the ends to which alone he was anxious to direct them, the licentious uproar of popular phrenzy might have been hushed nearly at the beginning of the contest —the savage triumphs of profligate and sanguinary upstarts might have been prevented— the constitution of France might at once have been reformed and preserved, and the life of its amiable sovereign might have been rescued from most unmerited destruction. That most deplorable event may have surprised other men more than it surprised such observers as Mr. Fox. But no Christian, however pious, no loyalist, however ardent, no human being,

however compassionate, viewed it with more indignation and horror than our virtuous friend.

Opinions may now be tried by the test of facts, and the merits of measures may be decided without undue partiality to statesmen who are no more. I ask only what intelligent and honest men will always be ready to grant, that moderation in principles is very compatible with ardour in language. The moderation of Mr. Fox then at the commencement, and I add during the progress of the French revolution, was the result of intense and serious meditation upon the experience of past ages. But the errors of his more ardent opposers have been detected in the recent and melancholy experience[62] of our own times.

"Quis est," says Cicero, speaking of his own mistakes and his own unhappy times, "tam Lynceus, qui tantis Tenebris nihil offendat? nusquam incurrat?"* Upon a subject so complex, and in many respects so novel as the revolution in France, where the interposition of foreign powers was marked at once with indecision and rashness, where great and general views were suddenly crossed by local considerations or selfish motives, and where the immediate agents at home, were numerous, restless, discordant in their purposes, and infuriate in their passions, no observer could, at the outset, be purely and entirely right. At this distance of time, therefore, the proper enquiry is, who among our countrymen was least wrong? Upon some

* Epis. ad Famil. lib. ix. Epis. 2.

questions in theory, and many contingencies in practice, all disputants I think lie open to the imputation of error. They thought too well or too ill of the contending parties. They acted too little in some respects, and too much in others, and to a long and frightful catalogue which history supplies, they have added one striking instance, that the wisest of men may plume themselves too highly upon their foresight, and that man is doomed to call much of his real knowledge by the just, though humble name of Ἐπιμηθία.

But we are led, surely, by the venial, I had almost said, the amiable instincts of our nature, to feel a bias in favour of those persons who from general principles wish well to the liberties of mankind, who recommend peace to governments, and who are solicitous rather to persuade than compel, and to conciliate rather than inflame.

The measures which Mr. Pitt proposed have been tried—those which Mr. Fox pointed out have not. But no candid man will refuse to Mr. Pitt the praise of right intention. Yet upon a dispassionate and serious review of the comparative merit to be ascribed to Mr. Fox, few intelligent men would now venture upon direct and unqualified contradiction, if that statesman, with some alteration of Cicero's words, had been induced to say, "Se et plus vidisse, et speravisse meliora."*

He that in the intercourse of private life could "be angry and sin not," may be readily supposed to

* Vid. Phil. ii. par. 7.

separate every malignant feeling from measures of political hostility, and to make allowances for the unsuspected and complicated motives of those actions which, disguise the deformity of ambition from its votaries, and which, under the most specious pretences, too frequently disturb the tranquillity of the world. But knowing every unnecessary war[63] to be pregnant with inconveniences and mischiefs which baffle calculation,[64] he was disposed by reflection and by habit to check rather than to rouse, and to assuage rather than to provoke, the fiercer passions of mankind—he rested national glory upon the broad and strong foundation of national security—he laboured to appease, and by appeasing to protect, his irritated, and perhaps injured countrymen, at the hazard of offending their pride,[65] and forfeiting their favour—he preferred dispassionate negotiation to precipitate violence, in his conduct towards foreign powers; in the pursuit of redress, he steadily kept in his view the possibility of reconciliation—he weighed in the balance of impartial justice every complaint of the accuser, and every plea of the accused—he dismissed what was trifling—he explained what was doubtful—he asserted what was clear and equitable—he employed moderation as the harbinger of vigour, and if compelled to unsheath the sword, he would have discerned, welcomed, and improved, every opportunity which the course of events might have afforded him for holding out the olive branch. In order to secure the usual relations of amity and peace, he would have endeavoured to preserve or restore the usual rela-

tions of men to men, and of states to states, in the struggles of war. "Ipsam quoque pacem esse judicasset, non in armis positis, sed in abjecto armorum (et injuriarum) metu."* Like a wise man[66] of whom we read, he, in times of apparent tranquillity, would not have been wholly unprepared for war. But he would have made peace, and tried to keep it, in the spirit of peace. For the attainment of this difficult, but honourable purpose, he, in his negociations with foreign courts, would have employed gentlemen, not upstarts; experienced men, not striplings and sciolists; men of observation upon political characters, measures, and causes, rather than novices who understand not what they see, and spies who often report what they see not.

The western world[67] has, therefore, to lament that this accomplished statesman was not sooner called into office, where his sound and generous policy might have prevented the mistakes[68] of his illustrious competitor, and where, by carrying into effect his favourite measure, peace, he might have restrained that military power, which, generated by the enthusiasm of revolution, has transferred the desperate courage of self-preservation to the hardy enterprizes of ambition;[69] which has gathered increase of strength from increasing resistance; which has formed fresh projects after every instance of fresh success, and which now threatens[70] speedy and total subjugation to the convulsed, dismayed, and infatuated continent of Europe.

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* Vid. Cicero. Lett. 6, to Plancus, lib. x.

Though every passing day gives us occasion to regret that the serious and reiterated warnings of Mr. Fox were not more favourably received and more diligently followed; yet must it afford you some consolation, that justice will be done ultimately and amply to the rectitude of his intentions, and the wisdom of his counsels. The pacific spirit which he recommended, the sage observations which he enforced, the immutable principles upon which he reasoned, the unfeigned and affectionate earnestness with which he pointed out to England the true, and indeed the sole path to safety and to glory, amidst the disasters of the American, the last, and the present war, will not be lost in oblivion. Even to the latest posterity, they will continue to be subjects of useful and interesting investigation to politicians and patriots, who are animated by the same honest desire to consolidate the interests of governors and the governed—to substitute plain-dealing for imposture, and protection for oppression—to soften some of the harsher effects arising from the multiplied inequalities of condition—to correct inveterate abuses, and gradually to improve and secure social order, by extending and perpetuating the precious blessings of social life.

Surely, then, dear Sir, we shall not be accused of very unreasonable partiality in transferring to our friend the dignified and comprehensive praise, which was once bestowed upon Collatinus, "uno ore cui plurimæ consentiunt gentes Populi Primarium fuisse Virum."*

* Vid. Cicero de finib. lib. ii. par. 33, and de Senectute, par. 17.

History, doubtless, will unite the name of Mr. Fox with the names of Demosthenes and Cicero, who, in distant climes, and to distant ages, shed a lustre over the annals of their country—each of them transcendantly superior to the most eminent characters of their own times, and of the generations succeeding them—each alike reviled by the venal, and defeated by the crafty, in their endeavours to preserve public liberty—each the most eloquent speaker, and the most skilful statesman that ever adorned the most enlightened and civilized nations of antiquity.

It is pleasing, and I think instructive, to trace points of resemblance, and points of difference between those personages who have filled a broad space in the public eye,

Quique sui memores alios fecere merendo.*

From popular governments we may without impropriety derive illustrations of that character, which among ourselves owed the greater part of its splendour to the defence of popular principles; and in speaking of a man to whom the writings of Greece and Rome were familiar, I shall not descend to the childish affectation of apologizing to you, when I employ from them such passages as occur to my memory. If, then, the most virtuous man living had risen up in parliament to oppose Mr. Fox, he would not have been subject, as Demosthenes was in

* Æneid 6.

the presence of Phocion, to the mortification of whispering in the ear of his friend,

Ἢ τῶν ἐμῶν λόγων κοπὶς ἀνίσταται.*[71]

There have been times when, should certain antagonists have said to him tauntingly, "the people will kill you, if they are enraged up to madness," he might have replied with Phocion,

Ὑμᾶς δὲ ἐὰν σωφρονῶσι.†

Perhaps in foresight he was not very inferior to Themistocles, qui et de instantibus (ut ait Thucydides) verissime judicabat, et de futuris callidissime conjiciebat.‡[72]

Here the comparison must stop, for the patriotism of Mr. Fox was not quite so unscrupulous as that of Themistocles; and if it had been proposed to him to burn the fleet of a neighbouring state, and thus to obtain the dominion of the seas, he in all probability would have given the same answer which immortalized the name of Aristides—Τῆς πράξεως ἣν ὁ Θεμιστοκλῆς πράττειν διανοεῖται, μήτε λυσιτελεστέραν ἄλλην, μήτε ἀδικωτέραν εἶναι.§ The Athenians, dear Sir, as you remember, were for once prevailed upon to prefer substantial justice to immediate advantage. But if Mr. Fox had given the same advice with Aristides, would he have met with the same success? Perhaps he would, if he could have commu-

* Plutarch, ed. Xyland, vol. i. p. 744. vol. ii. p. 803.
† Id. vol. i. p. 746. ‡ Corn. Nep. in Vit. Themistocles.
§ Plutarch, in Vit. Aristid. vol. i. p. 322.

nicated to his hearers the same conviction which he must himself have felt, that so flagrant a violation of justice might lead to very disgraceful and very disastrous consequences. But for the present many of our countrymen seem content to say, victoriæ rationem non reddi.*

"Hephæstion," † said a great conqueror, "loves Alexander, but Craterus loves the king." The truth of this observation has been seen and felt by the powerful in all ages. But the experience of Mr. Fox supplies one cheering and solitary exception.[73] For reasons which it is unnecessary to state, few who acted with him could be much influenced by the expectation of patronage. Their attachment,[74] however, reconciled them to the loss of profit and of power, and it is, I believe, generally allowed that the adherents to his party were the friends alike to his private[75] and his public virtues. Such was his singular felicity through life, and I hope not to be accused of any unbecoming partiality when I notice, as others have done, some peculiar circumstances which after his death do honour to his memory.

Strong and agreeable as are the feelings of admiration, yet, unless they be sustained by the approbation of moral qualities in their object, they gradually languish, and at length subside into cold indifference. Though wit for a time may amuse, and genius delight us, the good sense and justice of mankind induce them to take a permanent interest

* Tacit. Hist. lib. iv. par. 14.

† Plutarch. in Vit. Alexand. p. 691.

only in the disposition of the heart. Mr. Burke, who by the sorcery of his eloquence had captivated the senate, agitated a whole people with indignation and terror, and stirred up sovereigns to hostile confederacies, is at this hour almost forgotten by those whom he had endeavoured to please, and those whom he had wantonly provoked—by the supple race of courtiers, and by the "swinish herd."[76] Mr. Pitt seems to be less censured by his former adversaries, and less idolized by his former panegyrists. The gratitude of some for favours received, the predilection of others for the system of politics which is now thought to prevail, the pleasing remembrance of personal friendship, and the sincere participation of that respect which all his countrymen felt for his magnanimous contempt of pelf,[77] preserve some degree of veneration, and I add, affection for his name. No man was ever more applauded in the zenith of his power, and conspicuous, most assuredly, will be his talents in the records of history. Yet the brilliancy of many of his speeches has fainted with the freshness of the occasion which produced them, and the sentiment of popular admiration, which during his lifetime was most lively, has undergone a partial decay. But Mr. Fox, who had little to give beyond good wishes, and little to receive from other men beside the same wishes as the recompence of his good meaning, even now keeps a hold, which from the regret that mingles with it, is stronger, perhaps, than that which he had when he was living, upon our attention, esteem, and love. He will long con-

tinue to keep it, because his actions were not at variance with his professions, because his political virtues were not disproportionate to his political abilities, and because his errors and infirmities were not accompanied by cowardice, fickleness, dissimulation, or venality.

"Felix Agricola," says Tacitus, "non vitæ tantum claritate, sed etiam opportunitate mortis." The force of this reflection I have sometimes felt, when for the purpose of alleviating my own sorrows I have pondered, and exhorted others to ponder, on certain circumstances in the time of Mr. Fox's death. Having lived long enough to soften, we may hope, though I fear not to overcome, the prejudices of his sovereign, of the nobles, and of a deluded and ungrateful people—having remained long enough in office[78] to exhibit a mind stored with a perfect knowledge of the complicated relations[79] in which the British empire stands to foreign powers—having manifested, even in the few measures which he proposed, and in the spirit which he suddenly infused both at home and abroad, the extraordinary superiority of his practical abilities—having again and again given the most unequivocal proofs of that disinterestedness and magnanimity which made him regardless of popularity, fortune, and power, when opposed to the real and permanent welfare of his country, Mr. Fox was overtaken by a most painful and dangerous illness. But the prospect of approaching dissolution served only to enliven his zeal, and to accelerate his exertions. In his correspondence with the wily and eloquent minister of

France, written as it was under the pressure of disease, and even on the verge of the grave, we still see the same noble qualities of his heart co-operating with the same wonderful powers of his judgment. We see in it no vestiges of that ambiguity upon which the cunning rely for success, and the base for shelter—no subtleties of sophistry—no artifices of reservation—no arrogant assumption of false dignity—no insidious abandonment of that which is genuine and becoming—no deviation from those sacred rules of sincerity and truth, which extend the authority of their obligation over the whole agency of moral beings, and diffuse their happy influence over the pursuits of individuals, and the negociations of statesmen.

Might we not rest the credit of our friend's sagacity, moderation, steadiness, and honour, upon his manifesto to the court of Berlin, about the seizure of Hanover? I read it six times attentively, and with fresh satisfaction from every fresh perusal. I have heard of the serious impression which it made in the best informed circles at home, and in every court upon the continent. But how shall I describe it? Shall I say that it was conceived and expressed, *more majorum?* It was so—Shall I add, as Dr. Young said of Johnson's Rasselas, "that it was a mass of sense:" it was that, and more. Let me characterize it then in the emphatical words of an ancient critic—

Πολλῆς ἦν πείρας τελευταῖον ἐπιγέννημα.*

* Longin. sect. vi.

You and I have long been convinced, that manners, and the spirit which regulates them, have a very extensive influence over the affairs of public as well as private life; and of that influence we saw the very happiest effects in the proceedings, not of Mr. Fox only, but of other persons who were lately his associates in power. They were men of sense, men of letters, gentlemen, and statesmen. Their language was sometimes elevated without arrogance, and sometimes temperate without pusillanimity. They restored the old and venerable character of a free, a just, and strong government in the view of the people and of Europe. When I think of Mr. Canning, Lord Harrowby, and Lord Chatham, I shall not say that their predecessors engrossed "all the talents." They never themselves harboured such a presumptuous thought. They never uttered such a silly expression. But their intentions were honest, their measures were wise, and their fall was unmerited by themselves, though not unexpected by those who have observed of what stuff court-favourites and novi homines are sometimes made.

Some men will ask, was I not personally interested in the continuance of their power? For aught I know, I might be, and for aught I know, I might not be. But thus much I do know, and to those who would insult me with the question I should confidently say thus much, from my youth upward to the present moment, I never deserted a private friend, nor violated a public principle—that I have been the slave of no patron, and the drudge

of no party—that I formed my political opinions without the smallest regard, and have acted upon them with an utter disregard to personal emoluments and professional honours—that for many, and the best years of my existence, I endured very irksome toil, and "suffered" very galling "need;" that measuring my resources by my wants, I now so "abound" as to unite a competent income with an independent spirit, and above all, that looking back to this life, and onward to another, I possess that inward "peace of mind, which the world can neither give nor take away."

But let us return from this digression, to a more important subject.

After enjoying health of body, and serenity of mind, to an advanced period—after tasting the purest pleasures of friendship and literature—after deserving the confidence of his countrymen—after obtaining the respect of surrounding nations—after devoting a long and laborious life to the freedom of England, the tranquillity of Europe, the abolition of the African slave trade, the correction of Asiatic enormities, and the general happiness of all his fellow-creatures, Mr. Fox was doomed to pay the last debt of nature. But he died, let us remember, before his faculties had been impaired by gradual decay—before the comprehensive and salutary plans, which he was beginning to execute, had been counteracted by domestic intrigues, or foreign violence—before the baneful systems of authorized corruption and protracted war, which he had so loudly condemned, and so firmly resisted, were once more

brought into action—before the multipled and aggravated calamities which he foresaw, and was endeavouring to avert, had overspread the political hemisphere—before the errors of his secret rivals, and the machinations of the common enemy, had in every quarter hastened those evils, the presence of which must have wrung with anguish his benevolent and tender heart.

Uncorrupted by the fascinations of praise, undismayed by the clamours of slander, sighing for peace to an exhausted world, and bequeathing to posterity an example fitted to impress the purity, simplicity, and grandeur of his own character upon that of his countrymen, he expired amidst the tears of his friends, and the affectionate embraces of his nearest and most beloved relations. "O Fallacem hominum spem fragilemque fortunam, et inanes nostras contentiones: quæ in medio spatio sæpe franguntur, et corruunt, et ante in ipso cursu obruuntur, quam portum conspicere potuerunt. Nam qui annus ab honorum perfunctione primus, aditum Crasso ad summam auctoritatem dabat, is ejus omnem spem, atque omnia vitæ consilia morte pervertit. Fuit hoc luctuosum suis, acerbum patriæ, grave bonis omnibus. Sed ii tamen rempublicam casus secuti sunt, ut mihi non erepta L. Crasso a Diis immortalibus vita, sed donata mors esse videatur. Non vidit" *—but I forbear, not so much from inability to accommodate much of the remaining

* Vid. Cicero, de Oratore, lib. iii. par. 2.

matter in Cicero to the present times, as from unwillingness to exasperate a set of men who seem to prefer the very harshest discipline of experience to the instructions of sober reason.

To close the scene, the funeral of Mr. Fox was attended by persons of the highest distinction for science, learning,[80] political abilities, and hereditary rank. The procession was marked by a deep and solemn silence, which evinced the unfeigned sorrow of all spectators; and his remains were interred in Westminster Abbey, the hallowed repository of departed sages, heroes, patriots, and kings.

Away with those politics, and that philosophy, which would steel our hearts against the honest feelings of nature. Why, dear Sir, should we dissemble, or indeed how can we forget what we experienced when the lifeless body of our friend was "committed to the ground" near the grave of a rival who, but a few months before, had fallen from the heights of fame and power into the "valley of the shadow of death?" Was it not melancholy and awe, mingled with a sort of wonder which, restrained and attempered by circumstances, soothed, rather than ruffled the observer, and with solemn reflections upon the appointed end of genius, ambition, and all sublunary glories? Reviewing and cherishing what we then felt during the hallowed rites of burial, why should we hesitate to apply to these extraordinary men some striking words, which, in the last century, were quoted with singular felicity, but with allusions less favourable, at the interment

of a celebrated exile * from the country, and the sepulchres[81] of his fathers?

> "Hi motus animorum, atque hæc certamina tanta,
> Pulveris exigui jactu compressa quiescunt." †

The death of Mr. Fox, accompanied as it was by the sweet remembrance of benefits so recently conferred, or intended to be conferred, on so large a portion of the human race, will ever be interesting to my mind. When contrasted with the toils, disappointments, and unmerited indignities[82] which he had been doomed to endure for many years, it resembles a well-executed drama, in which some distinguished personage has, through a series of sharp trials, preserved his consistency to the close, and meets at last with that justice which had been long withholden from him. In the bosoms of those who attended him in his last moments, it must excite the most serious wishes, that their own end "may be like his," and to himself, we trust, it was, in the language of Milton, "a gentle wafting to immortal life." ‡ "Si quis piorum manibus locus, si, ut sapientibus placet, non cum corpore exstinguuntur magnæ animæ, placide quiescat. Nos Amicos suos ab infirmo desiderio, ad contemplationem virtutum suarum vocet. Is verus honos, ea conjunctissimi cujusque pietas. Id quoque Uxori, Nepotique ejus præceperim, sic Mariti, sic Avunculi memoriam venerari, ut omnia facta dictaque ejus secum revolvant, famamque ac figuram animi magis

* Bishop Atterbury. † Georg. iv.
‡ See Paradise Lost, book xii.

quam corporis complectantur. Non quia intercedendum putem imaginibus quæ marmore aut ære finguntur. Sed ut vultus hominum, ita simulacra vultus imbecilla ac mortalia sunt, forma mentis æterna, quam tenere et exprimere, non per alienam materiam et artem, sed tuis ipse moribus possis."*

They who pursue the plain and straight course from which he never swerved, will do just homage to his moral and intellectual excellencies, and will obtain to themselves immortal honour for their sagacity, their fortitude, and their integrity. But they who strike aside into the dark and crooked bye-paths which he always shunned, will stand convicted of insulting his memory, of sacrificing patriotism to selfishness, and of heaping disgrace and destruction upon that empire which his principles had adorned, and which his counsels might have preserved.

To you, who feel as I do, the unusual importance of the subjects which I have had occasion to discuss in this letter, no apology can be necessary for the unusual length of it. It is written with that sincerity which becomes a real friend of Mr. Fox, and with which I shall ever be ready to prove myself, dear Sir,

Your well wisher, &c.

December 6, 1807.

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* Tacit. in Vit. Agric.

NOTES.

Note 1, p. 15.

Marcus Antonius, in the only book he ever wrote, professes "disertos se vidisse multos, eloquentem omnino Neminem," and Cicero, who records this observation,* seems in several passages to assent to it. But having described the "varia officia Oratoris," he says, "inventus profecto est ille eloquens, quem nunquam vidit Antonius. Quis est igitur is? Qui et humilia subtiliter, et magna graviter, et mediocria temperate potest dicere." And again, "qui poterit parva summisse, modica temperate, magna graviter dicere." †

Surely the foregoing words remind us of the variety which appeared in Mr. Fox's speeches, and the adaptation of his matter to his subject. Yet, as Cicero acknowledges, and very justly, that no speaker really possessed all those qualities in the high degree of excellence which he and Anthony could conceive, and then professes to return, in Platonic language, ad Rei Formam et Speciem, I am content to say, that Mr. Fox only approached the character of a perfect orator. But what did he actually reach? I answer, with very little fear of contradiction from impartial and intelligent critics, that he possessed "Genus dicendi subtile in probando, modicum in delectando, vehemens in flectendo, in quo uno Vis omnis Oratoris est." ‡

Or, I would say of Mr. Fox, as Cicero, referring to his own work called Brutus, did of Demosthenes, "Recordor me longe omnibus unum anteferre Demosthenem, qui vim accommodarit ad eam quam sentiam eloquentiam; non ad eam quam in aliquo ipse cognoverim. Hoc nec gravior exstitit quisquam, nec callidior, nec temperatior." § I see great excellencies in some of

* Cicero, Orator. par. 18. † Ibid. par. 70, 71. edit. Gronov. ‡ Ibid. par. 69. § Ibid. par. 23.

Mr. Fox's contemporaries; but the fault which I chiefly impute to them is τὸ πανταχοῦ κώδωνας ἐξῆφθαι.*

NOTE 2, p. 17.

"Ὥστε καὶ μεγαλόφρων καὶ μεγαλοπράγμων οὐκ ἐκ κενοῦ αὐχήματος, ἀλλ' ἐξ ἐχεγγύου διανοίας δοκεῖν εἶναι."†

NOTE 3, p. 17.

"Genus eloquendi secutus est elegans et temperatum: vitatis sententiarum ineptiis, atque inconcinnitate, et reconditorum verborum, ut ipse dicit, foetoribus. Præcipuamque curam duxit, sensum animi quam apertissime exprimere."‡

NOTE 4, p. 17.

To Mr. Fox, as a writer of History, we may by anticipation apply what Cicero says of a Dialogue which he had composed, and assigned to fictitious speakers, "de optimo Statu Civitatis, et de optimo Cive." "Hi Libri cum in Tusculano mihi legerentur, audiente Sallustio, admonitus sum ab illo, multo majore Auctoritate illis de Rebus dici posse, si ipse loquerer de Republica, præsertim cum essem, non Heraclides Ponticus, sed Consularis; et is qui in maximis versatus in Republicæ Rebus essem."§ In one of my letters to Mr. Fox, when I had mentioned to him the impatience of the public to see his History, and had expressed my wish that he would take his own time in preparing it, I desired him to read what Cicero said of an historical work, which his friends importuned him to undertake. You will not be sorry to see it. "Postulatur a te jamdiu," says Atticus, "vel flagitatur potius Historia—atque ut audias quid ego sentiam, non solum videris eorum Studiis, qui Litteris delectantur, sed etiam Patriæ debere hoc Munus." Among other reasons which Cicero assigns for declining the task, he gives one which I particularly urged to Mr. Fox for not being in haste with his work:

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* Longin. sect. 23. † Dio Cassius, Fragment. 56.
‡ Sueton. in Vit. August. parag. 85.
§ Epist. ad Quint. frat. lib. iii. Epist. 5.

"Historia nec institui potest, nisi præparato otio, nec exiguo tempore absolvi: et ego animi pendere soleo, cum semel quid orsus, traducor alio, neque tam facile interrupta contexo, quam absolvo instituta." *

If I am not greatly mistaken, we shall find in Mr. Fox's History that exemption from all foreign idiom, and all affected phraseology, which Photius ascribes to Herodian: "ἔστι δὲ τὴν φράσιν σαφῆς καὶ λαμπρὸς καὶ ἡδὺς, καὶ λέξει χρώμενος σώφρονι, μήτε ὑπεραττικιζούσῃ, καὶ τὴν ἔμφυτον ἐξυβριζούσῃ χάριν τοῦ συνήθους, μήτε πρὸς τὸ ταπεινὸν ἐκλελυμένῃ, καὶ τὴν ἔντεχνον ὑπερορώσῃ γνῶσιν." †

Whether my conjectures about the style of Mr. Fox's History be right or wrong, I am sure that the matter contained in it will furnish us with additional opportunities for deciding on the justness of Polybius's remark, when he tells us "τὰ τῆς ἱστορίας ἕξει τότε καλῶς, ὅταν οἱ πραγματικοὶ τῶν ἀνδρῶν γράφειν ἐπιχειρήσωσι τὰς ἱστορίας, ‡ not negligently, but with the whole force of their minds, with the aid of long experience, and under the conviction that they must be unequal to the difficulties of their task, unless they brought with them τὴν ἐξ αὐτῶν τῶν πραγμάτων ἕξιν." ‡ As to the spirit of our friend's History, we most assuredly shall not find in it the τὸ μνησικακεῖν imputed to Thucidides by Dionys. Halicarnass. in Epist. ad Pomp. nor the faults which Polybius so earnestly and so frequently imputes to Timæus, who "παρεσκοτισμένος ὑπὸ τῆς ἰδίας πικρίας, τὰ μὲν ἐλαττώματα δυσμενικῶς καὶ μετ' αὐξήσεως ἡμῖν ἐξήγγελκε, τὰ δὲ κατορθώματα συλλήβδην παραλέλοιπεν." ‡

Note 5, p. 18.

I have lately heard that Mr. Fox left one volume of his History fit for publication, and that it has been sent to the press. Though his principles and general habits of thinking will, I am persuaded, be discernible in this work, the character of the com-

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* Quint. lib. i. de Legib. par. 2, 3.
† Vide Phot. Biblioth. sect. civ.
‡ Vide Polyb. Megal. Histor. lib. xii. sect. 6.

position will be adapted to history, of which Quintilian says, and which Mr. Fox well knew, "scribitur ad narrandum, non ad probandum; totumque opus non ad pugnam præsentem, sed ad memoriam posteritatis, et ingenii famam componitur." *

NOTE 6, p. 19.

You will not be displeased with me for applying to our friend that which is recorded of Basil and Gregory Nazianzen, two venerable Fathers of the Christian Church, who united great learning with great activity in their labours for the benefit of mankind: "γραμματικῆς μὲν αὐτοῖς, οὐδοτιοῦν παρεῖτο λαθὸν, οὐ μέτρων ἐπιστήμη, οὐ ποιητικοὶ σκοποὶ, καὶ τροποὶ: οὐχ ἱστορίας πλῆθος, οὐ πολιτικῆς λέξεως καθαρότης: ῥητορικῆς δέ τὸ τῆς φράσεως κάλλος ἀπανθησάμενοι, τὸ ψεῦδος ἐξέκλιναν." †

NOTE 7, p. 19.

These seeming repetitions in Mr. Fox's speeches, which offended shallow critics, were real excellencies. You remember the distinction made by Carneades, when he said, "Clitomachum eadem dicere, Charmidam autem eadem eodem modo dicere." ‡

NOTE 8, p. 20.

I differed from our friend upon the comparative merits of the Greek and Roman orators, and shall state my opinion in the words of Mr. Hume: "The manner of Demosthenes is much more chaste and austere than that of Cicero. Could it be copied, its success would be infallible over a modern assembly. 'Tis rapid harmony, exactly adjusted to the sense. 'Tis vehement reasoning, without any appearance of art. 'Tis disdain, anger, boldness, freedom, involved in a continued stream of argument: and of all human productions the orations of Demos-

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* Lib. x. c. 1.

† Vide Greg. Nazianz. Vit. p. 15, prefixed to his works in the Paris edit. 1630, vol. i.

‡ Cicero, Orator, par. 158.

thenes present to us the models which approach the nearest to perfection." *

NOTE 9, p. 20.

The passages which, in this and the following paragraph, are marked with inverted commas, are to be found in the third volume of Boswell's Memoirs of Johnson.

NOTE 10, p. 27.

I admit the convenience of a rule, and in the absence of more direct principles we must often be content with the aid of analogy. But Dr. Paley, I find, was struck, as well as myself, with the dimness of the analogical reasons at times employed in judicial pleadings, and says, "Whoever takes up a volume of Reports, will find most of the arguments it contains capable of the same analogy which the Dr. himself had employed in the controversy about literary property;" but he adds, "the analogies, I confess, are sometimes so entangled as not to be easily unravelled, or even perceived." †

NOTE 11, p. 28.

"Non illi imperium pelagi, sævumque tridentem,
Sed mihi sorte datum: tenet ille immania saxa,
Vestras, Eure, domos: illa se jactet in aula,
Æolus, et clauso ventorum carcere regnet. ‡

NOTE 12, p. 29.

To say the truth, my own opinion does not very widely differ from that of Mr. Burke, and I shall avail myself of his eloquent language in expressing it: "If a man with such a masculine understanding, such a stout and resolute heart, and of ambition so noble and generous, as Mr. George Grenville, had any defects not intrinsical, they must be rather sought in the particular habits of his life. He was bred in a profession. He was bred to

* Hume's Essay on Eloquence, vol. i. † Cap. ix.
‡ Æneid, lib. i. line 142.

the law, which is in my opinion one of the first and noblest of human sciences—a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but it is not apt, except in persons very highly born, to open and to liberalize the mind exactly in the same proportion."*

NOTE 13, p. 32.

The Commentary of Aquinas extends through the eight books of Aristotle's Politics; it was corrected after the collation of many MSS. and it is accompanied by the Latin translation of Leonardus Aretinus, to which another translation, yet older, is subjoined. Julianus Martinus Rota added four books written by T. Aquinas, De Regimine Principum. The angelic doctor contends stoutly for the superior usefulness of monarchy, and, to say the truth, many of his observations are just, profound, and worthy of serious attention from royal and imperial readers.

NOTE 14, p. 33.

Mr. Fox knew, as you and I do, that Cicero, who in his speeches for L. Muræna, and A. Cecinna, laughed at the impertinent introduction of legal terms, and the solemn self-importance of those whom he calls Rabulas de foro, and Leguleios, had been himself accustomed a primo tempore ætatis juri studere—that he allowed those persons, "summos fuisse in civitate sua viros qui id interpretari populo et responsitare soliti essent"—that even where he says, eos magna professos, in parvis esse versatos, he grants, Munus eorum qui consulerentur, esse populo necessarium etiamsi esset exiguum †—that he praised the well-acquired and well-regulated knowledge of Aquilius in the very oration where he sarcastically taunted an antagonist who had endeavoured eum ex campo æquitatis ad istas verborum angustias et ad omnes litterarum angulos revocare‡—that he was the correspondent of Sulpitius,§ and not only addressed some of his letters, but dedicated his Topics to Trebatius, who, before his connection with

* Burke's Works, vol. ii. p. 389. † Vid. lib. i. de legibus.
‡ Vid. Orat. pro Cecinna.
§ Vid. Cic. Ep. ad Famil. lib. iv. 13.

Julius Cæsar, "must have laid the foundation of that juridical learning, which, in the reign of Augustus, had made him esteemed the first lawyer of his age."*

NOTE 15, p. 33.

To the really superficial, who at the same time are really venal, and to such persons only, would I apply the animated language of a great writer. "Little does the peace of society require the aid of those lessons which teach men to accept of any thing as a reason, and to yield the same abject and indiscriminating homage to the laws here which is paid to the despot elsewhere. The fruits of such tuition are visible enough in the character of that race of men who have always occupied too large a space in the circle of the profession—a passive and enervate race, ready to swallow any thing, and to acquiesce in any thing—with intellects incapable of distinguishing right from wrong, and with affections alike indifferent to either—insensible, short-sighted, obstinate—lethargic, yet liable to be driven into convulsions by false terrors—deaf to the voice of reason and public utility—obsequious only to the whisper of interest, and to the beck of power."†

I do not agree with the writer of the foregoing paragraph, when in a moment of controversial ardour he seems to think that a large space in the circle of the profession has always been occupied by a race of men to whom laziness, shortsightedness, obstinacy, credulity, and venality are to be imputed. But when I consider how much the rights of individuals, and the welfare of the community, depend upon the profession to which he alludes, I hold that a very small space occupied by a very small number of such persons as he describes is too large for the public good. May we never see the day when it can be justly said of our own country, "nec quicquam publicæ mercis tam venale fuit, quam advocatorum perfidia."‡

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* Vid. Cic. Ep. lib. vii. and Middleton's Life of Cicero, vol. ii. p. 108, and Gravina, vol. i. p. 84.

† See Preface to a Fragment on Government, p. xviii.

‡ Tacit. Annal. lib. xi. par. 2.

NOTE 16, p. 33.

The usefulness which I assign to laws, the reverence which I feel for them, and the obedience which I would pay to them, are not incompatible with any of the foregoing observations upon certain peculiarities in the political speeches of the persons by whom they are administered. But they who hold, as I do, the indissoluble connection between good laws and good morals, will reflect on the importance of the following observation: "Σχέδον γὰρ τὰ πολλὰ τῶν νομίμων τὰ ἀπὸ τῆς ὅλης ἀρετῆς προστασσόμενά ἐστι· καθ' ἑκάστην γὰρ ἀρετὴν προστάττει ζῆν, καὶ καθ' ἑκάστην μοχθηρίαν κωλύει ὁ νόμος."*

With exceptions, many, I confess, and serious, to the criminal code of this country, both in its provisions and even its administration, I should generally adopt the language of Dr. Johnson, that "laws," enacted for the protection of property and life, "are the last result of human wisdom, founded upon human experience for the benefit of mankind." While they are unrepealed by the authority of the state, a good man will inculcate obedience to them, not only "for wrath, but for conscience' sake," and balancing general against particular convenience, he will carry his own personal submission nearly to the extent for which Socrates pleads with the most impressive eloquence in the well-known dialogue with Crito. Whatsoever disproportion he may see between crimes and punishments, and whatsoever measures he may employ to lessen that disproportion by the force of argument, he will yet remember that jurisprudence is seldom at direct and unqualified variance with morality, that every crime forbidden produces some mischief to society, and that every punishment inflicted confers some security.

I believe this reasoning to be exact, and I trust that your conduct and my own will be strictly conformable to it. I cannot, however, dissemble from you, that my humanity shudders, and my sense of justice recoils at the recollection of certain "things as they are," in a country which boasts of its freedom, its generosity, and its unrivalled progress in useful knowledge. If those boasts be, as I think they are, well-founded, the lenient

* Aristot. Ethic. ad Niomach. lib. v. cap. 2.

and equitable expedients for which many wise and good men* have pleaded again and again, might be proposed with the greater safety and the surer result. If that knowledge be real, how can it be better employed than in teaching men to view the physical evil of punishment, not less than the physical evil of crimes, as a real deduction from the general stock of happiness—in calculating, so far as our limited insight into motives will permit us, the share that is to be assigned to infirmity, as well as malignity, in unlawful action—in substituting, as other nations have done successfully, the restraints of shame for the dread of death—in presenting to common minds, distinctly and forcibly, the gradations of guilt by correspondent gradations of rigour—and in lessening the temptations to greater offences, when the commission of them seems to facilitate escape from equal penalties denounced against the less? If the summum jus be the summa injuria in the transactions of individuals, who are condemned for yielding to the suggestions of the selfish and malignant passions, is it not possible that a state, armed as it ought to be with irresistible power, and governed, as the judicial concerns of it must be, by frail and fallible men, may sometimes step beyond the bounds of real necessity in the sanction it affixes even to the most wholesome laws? May not the rulers of it be now and then actuated by the secret love of that power which is more precious as it is more exempt from controul, and which, as self-delusion is always ready to suggest to the possessor, is most salutary when it is most extensive? May not the very absence of corruption and venality in the administration of public justice decoy men into a delusive sort of self-complacency, and may not the very consciousness of impartiality in adherence to a known and fixed rule make them insensible, or at least inattentive, to the suggestions of compassion?

When the philosophy of ethics has been called down, as was said of the Socratici† sermones, from the sky‡ to the earth—when the principles of it, in the language of Bacon, "have been brought home to men's business and men's bosoms"—when the

* Viz. Sir Thomas More, Erasmus, Johnson, Beccaria, Eden, Dagge, Voltaire, &c.

† Horace, od. 19. lib. iii.

‡ Cicer. Academ. Quæst. lib. i. section 4.

rugged and austere rules of law in civil questions have been occasionally mitigated by corrective maxims drawn from equity—when our prisons by their goodly appearance display the munificence, if not the humanity of the country—when the miseries of the persons confined in them are in many respects alleviated, and when the ruthless and "steeled jailor is converted into a gentle provost, the friend of men"*—why do persons who upon other occasions shrink from palpable injustice and palpable cruelty—why, let me ask, in the exercise of their good sense and their benevolence for the welfare of their countrymen, do they stop short at the very point where life is to be taken away? All the information I have been able to collect from writers upon jurisprudence both foreign and domestic, ancient and modern—all the conversations I have holden with persons, whether of common or uncommon sagacity—all the dangers either to the morals of individuals, or to the safety of the community, or to the authority of the laws themselves, which I have been able to trace as consequences of that uncertainty which makes even the sharpest statutes "their perch, not their terror, to the birds of prey"†—consequences which must inevitably arise, when the head and the heart forbid the execution of a sentence which the lips are compelled to pronounce—all these considerations forcibly convince me that some change is practicable, and therefore desirable. Why then are we left to deplore in some of our older laws, the savage ferocity of barbarous ages, and in many of our new ones the cool, but undistinguishing and unrelenting jealousy, with which selfishness guards every avenue against encroachment upon its well-earned or ill-earned stores? Why do we in practice lose sight of Beccaria's observation, that "though the interest of commerce and property should be secured, commerce and property are not the ultimate end of the social compact, but the means of obtaining that end; and that to expose all the members of society to cruel laws in order to preserve them from evils necessarily occasioned by the infinite combinations which result from the actual state of political societies, would be to make the end subservient to the means, a paralo-

* Measure for Measure. † Ibid.

gism in all sciences, and particularly in politics?"* I admit the danger of many political reforms, which have been recommended by arguments rather specious than solid: I admit the indirect efficacy of political events and political measures in correcting political abuses, while laws unrepealed remain, and in truth ought to remain, undisturbed by the interposition of private judgment, and the influence of local and temporary circumstances; and upon this very property of stability I should ground the necessity of the utmost possible precaution in enacting them: I admit the danger of sweeping alterations in that code which provides for the security and the transfer of property in all its various modes: I admit that the increase of those variations, arising from the increased means of accumulation and the increased diversities of enjoyment, may call for new regulations: but on the subject of our penal code, and upon this only, I must, in common with many other calm and reflecting observers, wish for the "una litura." †

Do not suppose, dear Sir, that for one hour I would leave the public without effectual protection, or that I forget a custom recorded of the Persians, among whom the laws upon the death of their sovereign were suspended for the space of five days, in order to mark the necessity of resuming and enforcing them.‡ No—that *litura* should be instantaneously followed by a well-considered system of jurisprudence, in the preparation of which professional men, such as have been tried and approved amongst us, should sustain the part of assessors to sages such as I could name, and to the provisions of which we might upon the best ground apply the best definition of law I ever read: "*Νοῦς ἄνευ ὀρέξεως πᾶς ὁ νόμος ἐστί.*"§

I hope, dear Sir, that neither you nor any other intelligent man will put a captious interpretation upon my use of the emphatical phrase "una litura." I have employed it with much deliberation. I do not mean by it that any of the offences,

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* Vide note to chap. xxxiv. ed. iv.

† "Non multæ possunt nostros, Faustine, lituræ
Emendare Libros; una litura potest."—MARTIAL.

‡ Vide Stobæus, p. 294, and Sextus Empiricus, adv. Mathemat. p. 70.

§ Aristot. de Republica, lib. iii. cap. 16.

which the laws now restrain as injurious to society, should meet with impunity, or that the penalties now affixed to treason, to murder, and a few other heinous crimes, should be mitigated. But I do mean, that of the milder punishments some should be softened, and others increased; that transportation or imprisonment, or punishments carrying with them great pain or great infamy, should be substituted for death; that death should be denounced by the authority of the laws themselves, rather than inflicted by the discretion of the executive government, against the third or fourth repetition of many crimes which are now in the first instance capital; that this principle, which now is adopted in a few cases, should be extended to more; and that, in order to prevent the useless and numberless disputes which in the discussions of a popular assembly are likely to arise from the proposed repeal of penal statutes one after another in detail, the new code should be ushered in by a most precise and most wary preamble, revoking all former statutes in the mass, and declaring that crimes should hereafter be punished under the circumstances and according to the degrees stated in that code. I suppose not only the code itself to be sanctioned by parliamentary authority, but the persons who prepare it to be appointed by the same authority, without the smallest respect to party differences, and from a firm conviction that they who are called to this momentous task are really and largely endowed with every intellectual and every moral qualification. I hope not to be thought romantic in expressing a farther wish, that once or twice every year, upon the approach of the assizes, an abridgment of the code itself should be read in every parochial church, and that this ceremony should be accompanied by a judicious and most solemn homily, composed by the most enlightened ecclesiastics, and sanctioned by the public authority both of the church and the state. Such a practice would give real propriety and real efficacy to the well-known maxim, "ignorantia legis neminem excusat."

"The punishment of a crime," says Beccaria, "cannot be just (that is, necessary) if the laws have not endeavoured to prevent that crime by the best means which times and circumstances would allow."* But can it be doubted that promulgation is

* Chap. xxi.

one among the necessary means of prevention? False and pernicious is the doctrine that men are slaves, when they are required to obey laws made by other men. But they surely must be deficient in the duties of good subjects, when they are called upon to obey laws not understood nor even known by themselves.

In respect to the civil code of this country, the proceedings at law by the statute 4 George II. chap. 26, "were done into English in order that the common people might have knowledge and understanding of what was alleged or done for and against them in the process and pleadings, the judgments and entries, in a cause." Yet we are told by Blackstone,* "that he knows not how well it has answered the purpose, but he is apt to suspect that the people are now, after many years experience, altogether as ignorant in matters of law as before." How far a remedy may be applied to that ignorance in matters of property I know not. But the promulgation which I recommend would exclude all such pleas of ignorance upon those statutes which create offences and command punishments.

"There needs," says the same writer, "no formal promulgation to give an act of parliament the force of a law, as was necessary by the civil law with regard to the Emperor's edicts; because every man in England is in judgment of law party to the making an act of Parliament, being present thereat by his representatives."† Blackstone's antagonist comments very sharply on the foregoing passage. "This," says he, "for aught I know, may be good judgment in law, because anything may be called judgment of law that comes from a lawyer that has got a name. It seems, however, not much like anything that can be called judgment of common sense." ‡

If by the force of a law be meant the right of exacting obedience from subjects, the reason assigned by Blackstone seems to me also far-fetched. It might involve many idle disputes about actual and virtual representation, and leave room for many absurd claims of exemption from obedience among those who should be inclined to contend, that not being actually repre-

* Commentaries, vol. iii.
† Comm. vol. i. chap. ii. p. 178.
‡ See Pref. to a Fragment on Government, p. 27.

sented, they were no parties to a statute, and are therefore not bound by it. Force, as meaning the right of demanding obedience, is communicated to laws directly and solely by the authority of the legislature itself. But administration is necessary to give efficacy to laws, and without promulgation it were unjust to administer them. For how shall subjects obey that in which they have not believed? "Or how," as St. Paul reasons, "shall they believe that of which they have not heard? Or how shall they learn without a teacher? And how shall they teach, except they be sent" and commissioned to do so?

If the subject were not of such infinite importance, I should be content to smile at the refinement or fiction of Blackstone, when he states the supposed presence of every subject at the enactment of laws, to supersede the necessity of formal promulgation. Magistrates, when they are required to execute statutes, are furnished with copies of them. But subjects, when they are forbidden to commit an offence, and threatened with exile, or imprisonment, or death, for committing it, are left to find out the meaning and very existence of a statute as they can. The fact is notorious, and I remember the perilous situation of two unhappy young men who had ignorantly subjected themselves to death by violating a recent provision against a particular kind of forgery.

The dogmas which with so much confidence of assertion, and so little conformity to facts, are every day advanced upon promulgation, example, and other matters closely connected with the lives of men and the safety of society, compel me to look for refuge in the judgment of a writer who, beyond all his contemporaries, is entitled to the honourable appellation bestowed upon Thalelæus, "qui ob scientiæ præstantiam dictus fuit νομικῆς ὀφθαλμὸς."* "Punishments must be inefficacious where the penal provision is not conveyed to the notice of the person on whom it seems intended that it should operate. Such is the case where the law has omitted to employ any of the expedients which are necessary to make sure that every person whatsoever, who is within the reach of the law, be apprised of all the cases

* Gravina, vol. i. p. 135.

whatsoever in which (being in the station of life he is in) he can be subjected to the penalties of the law."*

We read of a Roman Emperor, "Qui proposuit quidem legem: sed et minutissimis literis et angustissimo loco, uti ne cui describere liceret."† An English legislator would shudder at the thought of imitating Caligula's deliberation. But his negligence in giving notoriety to coercive laws which create offences, impose obligation, and command punishment,‡ must tend to produce a similar effect. Common sense and common humanity require that the "utmost possible care should be taken to lay before every man, of whom obedience is required, the clearest and most accurate view§ of that ideal object of which the part,

* Bentham's Introduction, chap. xiii.

† Suetonius in Vita Caligulæ, parag. 41.

‡ Vide Bentham, p. 329.

§ The Athenians, with a mixture of gratitude and admiration, were anxious to distinguish by a peculiar name the laws of Solon from those of Draco. They called the former *νόμους*, and the latter *θεσμοὺς*.—See the authors quoted by Meursius, cap. 13, de vita, legibus, atque scriptis Solonis. But there cannot be many persons now living who would commend the conduct of Solon in framing laws with studied obscurity, or acquiesce in the reason assigned for it: "*Λεγέται καὶ τοὺς νόμους ἀσαφέστερον γράψας, καὶ πολλὰς ἀντιλήψεις ἔχοντας, αὐξῆσαι τὴν τῶν δικαστηρίων ἰσχύν. Μὴ δυναμένους γὰρ ὑπὸ τῶν νόμων διαλυθῆναι περὶ ὧν διεφέροντο συνέβαινεν ἀεὶ δεῖσθαι δικάστων, καὶ πᾶν ἄγειν ἀμφισβήτημα πρὸς ἐκείνους, τῶν νόμων τρόπον τινὰ κυριεύοντας.*"—Plutarch, in Vit. Solonis, vol. i. p. 88, ed. Sylburg.

Such a measure might in Solon's estimation be suited to Solon's countrymen in Solon's age. But if it were proposed during the enactment of a Statute in the English Parliament, it would be indignantly rejected; and yet I remember something like an indirect and incidental approbation of the principle, in a speech which about the year 1780 was delivered in the Borough, and in which a sort of insinuation was thrown out, that it might not be wholly inconvenient for the common people to remain ignorant of the legal differences between riot aggravated by plunder, and treason.¶ The observation, when I read it in the newspapers, seemed to me most unbecoming in an open court

¶ Though Socrates eloquently pleaded the cause of Minos, and other departed lawgivers, as the benefactors of mankind, I doubt whether he would have admitted the person to whom I allude into his catalogue of worthies.—Vide Plat. in Minoe, vol. ii. p. 319, edit. Serran.

the whole, the multiple, or an assemblage of parts, wholes and

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of judicature, and to this hour *animus meminisse horret.* But at present there sits not, I am firmly persuaded, on the English Bench, one person who is capable of applying or uttering, or even harbouring in his mind, with the smallest degree of assent, so dangerous a rule for the administration of public justice.

Penal laws ought to be too clear to be misunderstood by any man of plain common sense and common attention—too strong to be violated with impunity by the audacious—too precise and definite to be evaded by the crafty, or perverted by the tyrannical, and too just to be enforced without the prompt and general approbation of society. Who controverts these trite and obvious truths? No one. But have lawgivers never neglected them? Have our forefathers never supposed the Judges of their day to usurp indirectly the office of lawgivers, to strangle the ordinary import of words and sentences in tight and intricate swaths of technical maxims, and to draw out from the body of a statute those vital energies, which they wished to see employed in giving strength and activity to all the huge and uncomely limbs of interpretation affixed to it by themselves? Have cunning villains never baffled the efforts both of judges and lawgivers, while for the commission of crimes similar in appearance, but far inferior in malignity, a wretch almost ignorant of his political duty, and quite unskilful in eluding danger, has suffered death?

The Roman law is indebted for much of its precision to the language it adopted from the Stoics, who were eminently distinguished by their accuracy in the use of terms. But Mr. Bentham has well observed that, in one instance, even the Roman lawyers utterly abandoned the original sense of *dolus*, which "implies deceit, concealment, clandestinity;" and in order to distinguish between *dolus*, and *culpa sine dolo*, applied the former word to "open violence," accompanied by "intentionality." —Elements of Jurisprudence, p. 92.

The best explanation I have ever seen (for it was not intended to be a defence) of the phrase *dolus malus* is in a most learned work of Heraldus. "Dolus," says he, "et dolus malus multo latius extenditur. Sed in lege Cornelia (de Sicariis et Veneficiis) est *πρόνοια*, quæ etiam in foro Attico dicebatur *ἐπίβουλη*, proprie, dolus. Dolus malus excludebat impetum et casum, quomodo et *πρόνοια*, et ideo homicidium dolo malo factum dicebatur, quod non furore factum, impetu, et casu, sed proposito, quod est *πρόνοια*. *Πρόνοια* in criminibus *βούλεσιν* significat, *διανοίαν*, *ἐπιβουλὴν*."—Animadvers. in Salmasii Observat. ad Jus. Att. et Rom. lib. v. cap. iii.

In a subsequent page I shall have occasion to notice the objection made by Mr. Penn to another phrase, *malus animus*,

multiples, mixed together, is exhibited by a statute."* A judge might then with better effect enquire, Quo animo fecerit, in reference to the legal, rather than the moral properties of an action.

"The learned and humane observer on the ancient statutes has suggested that a reformation of the English law can never be effectually carried on without the assistance of able lawyers not members of the legislature. With such assistance it might perhaps be easy to frame separate declaratory statutes relative to each class of crimes, comprehending all the descriptions and degrees of each crime, with their proportionate punishments. Every such declaratory statute should be attended by a supplemental bill, repealing all prior provisions relative to the class of crimes in that statute contained. It seems superfluous to point out the many collateral good effects which might arise from this method of seeking the end proposed. The repeal of particular statutes without such preparatory caution will be found a mere palliative remedy, which may tend indeed to abate the symptoms of the disease, but from which a radical cure cannot be expected." †

I see with much satisfaction, that between the excellent writer above quoted ‡ by Mr. Dagge, and myself, there is no very wide difference in principle. I wish, as Mr. Barrington does, men in parliament to have the assistance of lawyers who are not in parliament. They may bring equal abilities to the task, and perhaps in some cases they may be able to devote more time to it. But I think that the labours of both will be facilitated, and their

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as vague, indistinct, and unfit to regulate the measures of lawgivers in fixing the crime of murder. Mr. Bentham, with his usual acuteness, thus censures the same expression: "It is not unfrequent to meet with the phrase *malo animo*, a phrase still more indeterminate, if possible, than any of the former" (dolus, dolus malus, culpa sine dolo, culpa lata, levis, levissima, &c.) "It seems to have reference to intentionality, or to consciousness, or to the motive, or to the disposition, *or to any two or more of these taken together*, nobody can tell which; these being objects which seem to have never hitherto been properly distinguished and defined."—Elements of Jurisprudence, p. 92.

* Vide Bentham, p. 328. † See Dagge, vol. iii. p. 78.

‡ Mr. Barrington.

regulations improved by the farther assistance of studious persons whose talents have long been employed on the general science of jurisprudence, whose legal knowledge is accompanied by extensive reading in history, and by a spirit truly philosophical, and whose minds are wholly exempt from those prejudices which always arise more or less from professional pursuits, thoughts, and actions. It is plain that Mr. Barrington believed many amendments in our penal statutes to be necessary, and from the multiplicity and variety of the subjects which must be discussed by those who would reform them, I am led to think that a general repeal, followed up by a general re-enactment, would be more easy and more efficacious than a series of separate declaratory statutes. When the whole body of the code was under contemplation, it would be more practicable, not only according to the opinion of Covarravias, "to observe the rule of distributive justice in different species or degrees of the same crime, but to introduce the same measure of distributive justice between one crime and another."*

In opposition to these opinions, persons, I am aware, will not be wanting, who, like Cato the Censor, "legem ullam omnino abrogari indignentur;" and to such persons I should reply in the words of Valerius, "Quemadmodum ex iis legibus, quæ non in tempus aliquod, sed perpetuæ utilitatis causa, in æternum latæ sunt, nullum abrogari debere fateor, nisi quam aut usus coarguit, aut status aliquis reipublicæ inutilem fecit, sic quas tempora aliqua desiderarunt leges, mortales, ut ita dicam, et temporibus ipsis mutabiles esse video."† It were absurd to talk of danger from a general repeal of former statutes, when it is to be immediately succeeded by the enactment and promulgation of new ones.

"There are certain aphorisms," says Dagge, "which men of weak minds or interested views are always ready to apply, for want of solid reasons to support their objections. When any scheme of improvement is offered, hundreds will tell you that innovations are dangerous, for one who is capable of pointing out where the apprehended danger lies."

"Should this maxim prevail in the extent to which some are

* Dagge, vol. i. p. 258. † Liv. lib. xxxiv. par. 6.

desirous to stretch it, our laws would become, like those of some Eastern nations we read of, immutable. But innovations are then only dangerous when they are not founded on reason and justice, and when they are not introduced at a proper time and with suitable caution."

"In truth we are apt to be swayed too much by political maxims and the pretended necessity of things; there are many principles in the administration of government inconsistent with right-reason and strict justice, which political casuists attempt to vindicate by the general plea of necessity, and by making subtle and extravagant distinctions between political and moral virtue, which have no real foundation in nature."

"The bulk of the people, from their indolence and incapacity, judge every model to be perfect to which they are accustomed, and think whatever is, is necessary to be done. They are enemies to innovations because they are too short-sighted to perceive the good which may result, or too inert to oppose the inconveniencies which may ensue from a change."*

But let us hear what are the sentiments of a writer who is far superior to Dagge in depth of research, and precision of reasoning, and from whose work, as it is now very scarce, I shall not apologize for the length of the following quotation.

"It is wonderful how forward some have been to look upon it as a kind of presumption and ingratitude, and rebellion and cruelty, and I know not what besides, not to alledge only, nor to own, but to suffer any one so much as to imagine, that an old established law could in any respect be a fit object of condemnation. Whether it has been a kind of personification that has been the cause of this, as if the law were a living creature, or whether it has been the mechanical veneration for antiquity, or what other delusion of the fancy, I shall not here enquire. For my part I know not for what good reason it is that the merit of justifying a law when right should have been thought greater, than that of censuring it when wrong. Under a government of laws what is the motto of a good citizen? To obey punctually, to censure freely.

"Thus much is certain; that a system that is never to be cen-

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* Vide Dagge's Considerations on Criminal Law, cap. iii. and ii.

sured will never be improved; that if nothing is ever to be found fault with, nothing will ever be mended; and that a resolution to justify every thing at any rate, and to disapprove of nothing, is a resolution which pursued in future must stand as an effectual bar to all the additional happiness we can ever hope for; pursued hitherto would have robbed us of that share of happiness which we enjoy already.

"For is a disposition to find 'every thing as it should be,' less at variance with itself than with reason and utility? The common place arguments in which it vents itself justify not what is established in effect any more than they condemn it: since whatever now is establishment once was innovation."*

If a reflecting and benevolent foreigner were to examine our Statute Book, where Death is commissioned "to keep the fatal key" of so many cells, and "to shake a dreadful dart"† in so many directions, his soul would be wrung with anguish: and, unless he were told that common sense wages a perpetual war with positive institutions, and that the malefactors annually executed fall very short of the number annually condemned, he would suspect that every accuser is a Lycurgus,‡ every judge a Cassius,§ and every legislator a Draco.‖

Tarda sunt, we read in Tacitus,¶ quæ in commune expostulantur. The day of reformation among ourselves is, I am told, very distant. The pride of communities, like the pride of individuals, is wounded by the bare mention of their inconsistency, and their ingenuity supplies them abundantly with arguments from real mischiefs, when they are intent upon providing against such as are imaginary or exaggerated. The actual multiplication of penal statutes—the lapse of a century without the repeal of more than two or three, even under an enlightened government,

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* Preface to Fragment on Government, p. 14.

† Milton.

‡ I mean the Athenian orator, who is called by Cicero, in Brutus, "accusator vehemens et molestus." See Dr. Taylor's Preface to Lycurgus.

§ Lucius Cassius, the Roman Prætor, "cujus tribunal propter nimiam severitatem scopulus reorum dicebatur." See Val. Max. lib. iii. cap. 7.

‖ Vide Gravina, vol. 1. p. 233.

¶ Annal. lib. iv. par. 7. edit. Lipsic.

and among a public-spirited people—the prompt and courtly acquiescence of large bodies in every suggestion of dangers from quarters where professional experience is presumed to carry with it sound and dispassionate judgment—the stubborn prejudices of those who confound the right and the ability to administer laws with the numberless qualifications which are requisite to enact or to modify them—the languid sympathy of the higher orders with the lower upon the sight of evils which they are themselves under little or no temptation to incur—the unfeeling temper which is generated among all ranks by growing wealth and growing luxury—the systematic severity exercised against some classes of crimes, which though bearing a common name are accompanied by countless diversities of extenuating as well as aggravating circumstances—nay, the conscious superiority of a constitution which is daily and hourly recognized in its beneficial effects, and which reconciles our vanity and our indolence to the continuance of many concomitant abuses—these and other causes which it were invidious to enumerate, lead me to apprehend that in one race of glory this country will be outrun by some neighbouring states, where the recent mitigation of their punishments affords some compensation for their political thraldom.

Blackstone did not indiscriminately condemn the infliction of death; nor was he indifferent to the reputation of the English laws. But can we suppose that he had no view to the reform of those laws, and that he meant, not to hold up an example, but merely to state a fact, when he thus wrote, "Was the vast territory of all the Russias worse under the late Empress Elizabeth than under her more sanguinary predecessors? Is it now, under Catherine II. less civilized, less social, less secure? And yet we are assured that neither of these illustrious princesses have, throughout their whole administration inflicted the penalty of death; and the latter has, upon full persuasion of its being useless, nay even pernicious, given orders for abolishing it entirely throughout her extensive dominions. But indeed were capital punishments proved by experience to be a sure and effectual remedy, that would not prove the necessity (upon which the justness and propriety depend) of inflicting them upon all occasions when other expedients fail. I fear this reasoning would extend a great deal too far."*

* Book iv. chap. i.

The measures of the two Russian sovereigns excite greater surprise, and call for stronger approbation, when we reflect that at no very distant period the Czar Peter, "though actuated with a noble genius and smit with the love and admiration of European arts, yet professed an esteem for the Turkish policy in one particular, that he approved of such summary decisions of causes as are practised in that barbarous monarchy, where the judges are not restrained by any methods, forms, or laws; and that he did not perceive how contrary such a practice would have been to all his other endeavours for refining his people."*

I well know the facility with which despotic power enabled the successors of Peter to reform the laws of their subjects. But it were strange to suppose that a free people are not equally capable of using, and equally desirous of obtaining a mild system of legislation, with men who are inured to slavery. It were indecent to assert that the councils of any foreign sovereign should have the power of doing that suddenly and gratuitously, which the enlightened Parliament of an enlightened nation can not do deliberately and effectually.

Montesquieu had observed before Blackstone, "how industriously the Russian government endeavoured to temper its arbitrary power by breaking their numerous guards, mitigating criminal punishments, erecting tribunals, entering into a knowledge of law, and instructing the people." †

A despotic government has thus stept before our own free government in the mitigation of capital punishments. The Duke of Tuscany is said to have introduced a similar regulation ‡ in his dominions, nor have I heard of any great public inconvenience arising from it. Future writers on jurisprudence, therefore, will not fail to remark that the experiment has been made both in an extensive and a small state. I am aware that the example of America may not be quite conclusive in reasoning upon the laws of England—but the general approbation with which the American States looked upon those laws, gives great weight to the opinion which they had formed of our penal code.

"Though both the penal and common laws of England are

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* Hume, Essay 14. † Book v. chap. 14.

‡ Murder and treason only were to be punished with death.

generally adopted in the United States, the punishments differ materially; but it will be admitted that they are sufficiently proportioned to the crimes. In very few cases indeed, in any state, is the punishment of death inflicted. Legislative bodies consider, that the laws of man should seldom extend to the extermination of that life which was given by the Almighty. In Pennsylvania of late years capital punishments are remitted in all cases, I believe, except treason, or murder in the first degree, and in the latter case, death is seldom inflicted."*

"Though law," says Mr. Hume,† "the source of all security and happiness, arises late in any government, and is the slow product of order and liberty, it is not preserved with the same difficulty with which it is produced, but when it has once taken root, is an hardy plant, which will scarce ever perish through the ill culture of men, or the rigour of the seasons." Happily for mankind the observation of Mr. Hume is very true, as applied to those laws which are the real sources of social happiness. "What is profitable," as the same writer says, "to every mortal, and in common life, when once discovered, can scarce ever perish, but by the total subversion of society, and by such furious inundations of barbarous invaders as obliterate all memory of former arts and civility." But the misfortune is, that from mistaken views of public security, tares will be sown with the wheat, and that having once taken root they too become hardy plants, which are slowly extirpated by the culture of reason. Of this we have a notable instance in the laws against witchcraft, of which the long continuance is a disgrace to our statute book, and the very late repeal illustrates my position, that in governments less free than our own, rational jurisprudence sometimes makes a quicker progress.

It was enacted by statute 9th of George II. that no prosecutions should be carried on for the future against any person for witchcraft or enchantment. But let us not forget that the statute of Henry VIII. against this crime, and another statute of James I. of which Blackstone, ‡ gravely tells us that he did not class it under the head of improvements made in that reign, had

* Vide Janson's Stranger in America, p. 182.
† Essay 14. ‡ Book iv. chap. 34.

long continued in force. True it is that executions for this crime, which Blackstone most unaccountably calls dubious, and which every Judge now upon the bench would call impossible, are at an end. But it so happens that in this instance of legislation, as well as in many other instances of arts and science, France has the praise of invention, and England only that of imitation. Many an honest Englishman, who disbelieves witchcraft and boasts of his own constitution, would feel some surprise when he was told, on the authority of a learned judge, that in protecting old women from the gallows for being witches, the legislature of France had taken the lead of our own, "which," as Blackstone says, "at length followed the wise example of Louis XIV. in France, who thought proper by an edict to restrain the tribunal of justice from receiving informations of witchcraft." *

No human being can reverence more than I do the excellence of the English constitution. But I am unwilling to accept that excellence as a compensation for the severity of our penal code, and I suspect the justness of that reasoning which employs our liberty as a pretext for continuing that severity. Dr. Paley, I remember, tells us, "that the liberties of a free people, and still more the jealousy with which they are watched, and by which they are maintained, permit not those precautions and restraints, that inspection, scrutiny, and controul, which are exercised with success in arbitrary governments, where, in proportion as they render the commission or concealment of crimes more difficult, they subtract from the necessity of severe punishment." † I shall never allow that the liberty of a people increases the necessity of severe punishment, till all other expedients, from hard labour, from infamy, from long imprisonment, or solitary confinement, have been tried in vain. I shall not allow the validity of that reasoning, till experience has shewn whether a stricter police be not compatible with the preservation of our political liberty. The argument of Dr. Paley applies chiefly, if not solely, to those crimes which are accompanied with violence. But a very considerable portion of the offences for which malefactors suffer among us, are perpetrated without violence; and for the prevention of those which are committed with violence, persons who look with

* Book iv. chap. 4. † Chap. ix.

a jealous eye upon the invasion of our liberty, have often expressed their wishes for a more vigilant and active police. To me it seems, that in the administration of such police we should have little reason to be alarmed about the loss of our liberty, because the crimes against which that police is pointed have a more intimate and more visible connection with the happiness and security of men in private life, than with the peculiar interests of the government. If the experiment were made we might find that the diminution of capital punishments, together with the increased security of the public from a stronger police, would be accepted as an ample compensation for all concomitant inconveniences. Such a police would not require the summary proceedings of "military law." Our streets and public roads need not be "travelled and patrolled by soldiers;" but they might be guarded by other persons, who should be appointed, not by the Sovereign immediately, but by the Magistrates—who should be paid, not from the public treasury, but from County Funds—who should wear, not the dress of a soldier, but some other badge, which should mark their office. Thus appointed, thus recompensed, and thus accoutred, they would not appear to us the instruments of despotism. Suspected persons might, without injury to our freedom, be in some cases detained longer than they now are. Men might be apprehended, not on "mere suggestions," but upon strong proofs of "idleness or vagrancy." Accounts of a man's time, employment, and means of subsistence might be demanded, not at the arbitrary "pleasure," but the sound discretion of the magistrate; and the responsibility of the magistrate himself would afford reasonable security against the abuse of his power We might recall and modify that ancient institution which Mr. Eden pronounces to be "full of reason and humanity, and which dividing the people into certain classes, compelled the several neighbourhoods or divisions of men to become mutual pledges for the good behaviour of the individuals who composed them; and consequently when any offence was committed within their district, either to produce the offender, or become liable to such penalty, as might be thought proportionable to the peace of society." * Many other expedients, neither

* See Eden's Penal Law, chap. 8, and the quotation from Wilkin's Leges Edwardi.

arbitrary nor rigorous, might be employed with effect, and that effect would appear to be very good, not only as preventing the commission of crimes, but as subtracting from the necessity of punishing them severely, when they were committed and detected.

I hope that the constitution of England will always be alleged as a reason for increased lenity in the laws, and my opinion is supported by such authority as should protect me from the imputation of rashness. Montesquieu * observes, "that all laws should be relative to the principles of the government, to the nature of the climate, to the morals, manners, and religion of the people, and to the number of inhabitants." My concern is with the first only, and my sentiments upon them in relation to our criminal laws, shall be given in the words of Mr. Dagge. "It would be easy to prove," says he upon the authority of Montesquieu, "that in all, or almost all of the states of Europe the rigour of punishments has diminished or augmented in proportion as they approached towards or deviated from liberty."

Dagge illustrates this proposition by various instances drawn from history. He quotes a remark of the Chinese writers, that on the eve of a revolution there was always a great increase of rigorous punishment, and that a corruption of morals kept pace with their progressive severity. He contrasts the laws of Draco with those of Solon among the Athenians, and states as the result of his inquiry, "that the rigour of the Athenian laws was mitigated in proportion as liberty gained strength and ascendancy." He then examines the Roman government, where the laws were mild and the morals comparatively pure in the days of freedom: but where offences multiplied with penalties, and severity, from its natural tendency to debase the mind, destroyed the dignity of virtue, when tyranny and usurpation lorded it over the liberties of a corrupt people.

After tracing the imperfection of our own law under the old feudal system, and the causes of that imperfection, he thus proceeds: "It is remarkable that the first who restrained the benefit of the clergy was Henry VII. a politic and ambitious prince, who supported a precarious title by rigorous institutions; and by late

* Book i. chap. 3.

statutes it is entirely taken away in a multitude of offences. But what appears most extraordinary and unaccountable is, that the greatest part of the crimes for which offenders are excluded from their clergy, have been declared capital since the Revolution. If the proposition above quoted is true, 'that in all or most countries of Europe the rigour of punishments has diminished or augmented in proportion as they favoured or discouraged liberty,'* then how shall we reconcile this practice since the Revolution with the principles of the constitution?

"It is well known that at the Revolution the plan of liberty was extended, and our religious and civil rights at that time received confirmation and enlargement. Here then one might conclude there was room for a milder system of government.

"Nevertheless we find that the sum of capital punishments has been considerably augmented since that happy period, and there must certainly be an error in legislature when laws are enacted against the principles of the constitution.

"The ruling principle of government in this kingdom is allowed to be liberty; but our criminal laws seem rather calculated to keep slaves in awe, than to govern free men. They seem to contradict all notions of justice, and confound all distinctions of morality. By the ignominy they impose in many cases they bend the mind to the lowest state of servitude: by the rigour they indiscriminately inflict they adopt the principles of despotism, and make fear the motive of obedience.

"Despotism itself may indeed teach us milder institutions; for we are told that in Russia during the reigns of the late Empress Elizabeth, and the present Empress Catharine II. no malefactors have been put to death.

"It may be affirmed that were the injured themselves to be intrusted with the right of revenge, their sentence would not, in general, be so rigorous as that of the law, for few men in the present civilized state have that violent resentment against many offences which the law has expressed, and we find that they rather suffer crimes to go unpunished, than to be the instruments of punishing them too severely.

"Thus by impunity wicked men are confirmed in the habitude

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* See Montesquieu, book vi. chap. 9.

of evil till they become totally corrupt and abandoned, and thus the laws counteract their own end. They tend to corrupt rather than reform the morals of the people; they are repugnant to the dictates of reason and justice, and diametrically opposed to the principles of our constitution." *

The facts stated by Mr. Dagge are so important, and the remarks he makes upon them so just, that I shall not apologise for quoting them so largely, from a work which I believe not to be read so extensively as it deserves.

By the direct and indirect, the constant and occasional, the visible and invisible agency of those causes which connect the affairs of private and public life, the genius of every government will impress much of its own character upon the opinions and manners of the people; and wheresoever under the protection of laws and the influence of custom, real freedom is, there will be found many powerful aids to real virtue. Hence the tendency of such a constitution as our own is, to make men good subjects, not only to earthly powers, but to the moral government of God; not only to increase the number of good men, but to counteract the example, and to soften, in some measure, the malignity of the bad. If, therefore, the rulers of this world would reflect deeply and seriously on the whole process of that government, and the whole moral frame of the beings who are to live under it—if they felt, that punishment is justifiable in the degree, and only in the degree, in which it is experimentally found to be corrective—if they kept a watch on the latent deceitfulness of that vindictive spirit, which in its undisguised deformity they always disclaim, they would see that man acts both a wiser and a better part when he discerns at once the folly and the impiety of "biting laws," when he marks, but is not "extreme to mark what is done amiss," and when having, and being known "to have, mercy, he is therefore to be feared."

The spotless and peerless integrity of English Judges in the decision of civil cases is a subject of well-founded exultation to every Englishman who considers that property is one great bond of society, and that security under judicious and effectual

* Consideration on Criminal Law, vol. i. chap. 7.

laws is perhaps the most precious quality of property itself. But our penal code I must confess, presents to my mind the image of a gloomy cave, where Death enthroned represents the majesty of Justice, and where, as he stretches forth a scroll crowded with huge and hideous characters of condemnation, and scarcely affording to the eye, wearied in its descent through accumulated horrors, even a momentary relief by one erasure, he scares away the curiosity of every humane observer from contemplating the dreary scene,

"Ubi nos vestigia terrent
"Tot mortem adversum spectantia, nulla retrorsum."

Yet, in the administration of that very code, I have witnessed many painful struggles between the feelings of nature and the duties of office; and I have also seen some instances in which the infirmities and informalities of compassion were ill exchanged for that, which in my scale of morality falls little short of blood-guiltiness.

"Qui fruitur pœna, ferus est, legumque videtur
"Vindictam præstare sibi." *

At this very hour do I shrink, when my imagination presents to me the spectres of three furred *ανδρόκτονοι*, in whose abilities as exercised in trials for capital offences, "not light but darkness visible, served only to discover sights of woe."

With learning, taste, and genius which adorned the head, but improved not the heart, one of them was a sober, subtle, inexorable interpreter and enforcer of sanguinary statutes. With a ready memory, keen penetration, barren fancy, vulgar manners, and infuriate passions, another indulged himself in the gibberish of a canting fanatic, and the ravings of an angry scold before trembling criminals. With sagacity † enough to make the worse appear the better cause to superficial hearers, and with hardihood enough not to profess much concern for the bodies of

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* Claudian de Mallii Theod. Cons. l. 224.

† "*οἰδ' ἀκροώμενοι*
Τῶν ἀντιλογιῶν, καὶ λογισμῶν, καὶ στροφῶν
Ὑπερεμάνησαν, κἀνόμισαν σοφώτατον."

Aristoph. Ranæ, line 786.

men or their souls, the third carried about him an air sometimes of wanton dispatch and sometimes of savage exultation,* when he immolated hecatombs at the altar of public justice. Armed with "giant strength," and accustomed "to use it like a giant," these protectors of our purses transferred to thievery that severity which the court of Areopagus employed only against cutthroats, and they did so, where judges were not bound by a peculiar, direct, sacred oath adapted to the peculiar character of the tribunal, and where offenders had not the chance, as among the Athenians, of a more favourable issue from appeals to Thesmothetæ, nor that privilege of going before trial into voluntary exile, which, on the first institution† of this court, had been granted to them by legislators, who "*εἴθ' Ἥρωες ἦσαν, εἴτε θεοὶ οὐκ ἐπέθεντο τοῖς ἀτυχήμασιν, ἀλλ' ἀνθρωπίνως ἐπεκουφισαν, εἰς ὅσον εἶχε καλῶς, τὰς συμφοράς.*"‡

If a *Βῶμος Ἐλέου*, like that at Athens, had been placed in the avenue to our English courts, these *δικασπόλοι ἄνδρες* would have differed from each other in their outward demeanour, and yet have remained equally guiltless of "bearing the sword in vain." Elaphocardius upon approaching the hallowed spot might have paused for a second, winced under a slight stroke of rebuke from the monitor within, and quietly sneaked by on the other side. Cardamoglyphus would have wrung his hands, lifted up his eyes to Heaven, implored forgiveness to himself as a miserable sinner,

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* "*Ὥσπερ τινὰ ἀρέτην οὖσαν τὸ μηδὲ ἐν ταῖς μιαιφονιάις ὑπὸ τινὸς ἡττᾶσθαι.*"—Dio Cassius, Fragm. 137.

† "Originally the Areopagi took cognizance of all sorts of homicides; but afterwards their jurisdiction was confined to murders committed with premeditated design. A few ages after the Areopagus, another tribunal called Delphinium, was erected to try those who confessed the homicide, but justified it. Afterwards the Palladium was established, where they were tried who committed an involuntary murder." — See Dagge, Notes, vol. iii.

The Athenians distinguished between involuntary homicide and homicide *ἐκ προνοίας*, and if the murderer withdrew before conviction into banishment he was subjected to a total forfeiture." —See Eden, p, 222.

‡ Vide Demosthen. Orat. advers. Aristocrat.

and before sunset would have boasted of "not being as other men are," regraters, sabbath-breakers, libertines, and more especially as that execrable criminal who stood before him at the bar. But the steps of Cynopes would not have been turned aside to the right hand or to the left; his eye would have darted upon the emblems of the altar with a glare of fierce disdain; he would negligently have swept the base of it with the skirts of his robe; he would have laughed inwardly at the qualms of one of his compeers, and scoffed without disguise at the mummeries of the other. Happily these arbiters of life and death are now no more; they have left an example* not very likely to beimitated by their venerable successors, and my hope is that the mercy which they showed not to others in this world, may in another world be shown to them.

Sir Matthew Hale was too wise to be pedantic, and too honest to be artificial. Knowledge, reflection, and a lively sense of morality and religion had elevated his mind far above the petty gratifications which high office supplies to the weakness of vanity, and the restlessness of ambition. But I suspect that in order to sooth some unquiet misgivings and some tender yearnings of his soul, he by frequent efforts of recollection summoned to his aid those maxims which might lighten the burthen of his painful office as a judge. Hence, in his Contemplations, moral and divine, we read, "There must be duly considered the difference between a private person and a public person, whether minister or magistrate; the former, namely the private person, humility must teach him compassion, charitableness, gentleness; but the latter being intrusted in a public ministration, doth alterius vices agere; his personal humility, as a private man, must teach him to be charitable, but yet not to be remiss or unfaithful in the exercise of his office." †

Doubtless for Hale‡ "when finding himself swayed to mercy,

* "Τοὺς πολίτας, ἐξ οὗ ὅ, τε Σίννις, καὶ ὁ Σκείρων, καὶ ὁ Προκρούστης ἀπέθανον, οὐδεὶς ἔτι ἀδικεῖ." Xenoph. Memorab. lib. ii. cap. 1. In the original the word is ξένους, for which I substitute πολίτας, in order to accommodate the passage to my purpose.

† See Hale on Humility, p. 208.

‡ See Hale's words quoted in a note of Johnson's on Shakspeare's Measure for Measure, Act. ii. Scene 7.

to remember that there was a mercy likewise due to the country," was "a branch and parcel of his oath;" and perhaps as he was officially bound to administer laws which had been made by other men, and of which he might not himself entirely approve, he might often have been disposed to recal this sentiment as a preservative against the suggestions of pity, and even of equity not quite reconciled to positive institutions. But such a reader as Hale was in the great volume of human life, and such a believer too in "a judgment to come" must have remembered much more. He must have known much more from the frequent opportunities, which in the course of his private studies and his public duties had been afforded him for observing what passed within the breasts of lawgivers, judges, prosecutors, culprits, and spectators.* He must have known that profound writers (I mean those who lived before Butler) "upon the capacities and relations in which men ought not to be entirely deaf to the calls of affection," speak very doubtfully on the propriety of excepting even the judicial character,—that "the proneness of mankind to excuse insensibility or rigour makes it necessary for general rules and exhortations to be on the other side,"—and that in the entire absence of compassion even from the mind of a judge, the practical consequence might be, not that he would be guided by "the calm dictates of reason," which alone could compensate for such absence, but that he would ultimately fall under the influence of some less amiable, and less useful affection.† He must have known that "however pity, as a passive impression, may be weakened, while, as a principle of action, it is strengthened by exercise," in the ordinary course of human affairs, yet, even as a

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* There was a very humane maxim in the Civil Law of the Romans, "Favorabiliores rei potius quam actoris habentur." The natural reluctance of men to take away the lives of their fellow-creatures judicially is stated very luminously in the problems ascribed to Aristotle: "Ἕκαστος ἡμῶν μᾶλλον ἂν προέλοιτο τοῦ ἀδικοῦντος ἀποψηφίσαθαι ὡς οὐκ ἀδικεῖ, ἢ τοῦ μὴ ἀδικοῦντος καταψηφίσθαι, ὡς ἀδικεῖ· οἷον εἴ τις φεύγει δουλείας, ἢ ἀνδροφονίας· τούτων γὰρ ἑκάστου ὄντων, ἃ κατηγορεῖ ἀντῶν, μᾶλλον ἂν ἀποψηφίσασθαι ἑλώμεθα, ἢ μὴ ὄντων καταψηφίσασθαι." Problemat. sect. 29.

† See Butler's Sermons, 5th and 6th.

passive impression, it must in every situation be weakened by total disuse, and so weakened as to be eventually severed from the practical principle of benevolence, which principle itself depends for its first movements upon our passive impressions, which being always accompanied by such impressions more or less forcible, and more or less perceptible, is only strengthened by habitual exertion, and which must, together with the impressions themselves, be gradually impaired by long-continued inaction.* He must have known that the remark which he himself made on trials for rape, must sometimes have been applicable to other cases, "where the heinousness of the offence may transport the judge as well as the jury with so much indignation that they are overhastily carried to the conviction of the person accused thereof, by the confident testimony of sometimes false and malicious witnesses." † He must have known that writers on penal laws have by their subtleties encouraged the rash decisions of passion, when they dictated this inhuman maxim: "In atrocissimis, leviores conjecturæ sufficiunt, et licet judici jura transgredi." ‡ He must have known, that if Judges are accustomed to express the warm and honest indignation they feel against flagitious crimes, they may with equal propriety permit and acknowledge themselves to be susceptible of pity for inconsiderate youth, for grinding penury, for sudden anger, and all other extenuations which may accompany the criminal breach of unwholesome statutes. He must have known that in well informed and well regulated minds, neither indignation nor pity impedes the clear discernment of proofs, or the adaptation of judicial rules to well attested facts; that in the ordinary course of human affairs they operate, not during the trial, but after the sentence, and that their proper effect is not to expose the accused party to unmerited conviction, nor to protect him from it, if it be merited, but to produce the plenary infliction of punishment upon the very wicked, and the partial relaxation of it to the very unfortunate. He must have known that the plea of imperfection, as inseparable from all human contrivances for human happiness, is subject

* See Butler's Analogy, ch. 6.
† Hale, as quoted by Blackstone, book iv. chap. 15.
‡ Beccaria, chap. 13.

to many limitations. He must have known that however in compliance with the captiousness of prejudice, or the authority of usage, political restraints may be permitted to continue beyond the occasions from which they took their rise, jurisprudence is not entitled to the same discretionary latitude, or the same arbitrary decision, which are granted in politics; that in very severe punishments the visible fairness and visible simplicity of the laws which ordain them increase their efficacy; that they generally fall with the utmost weight upon the uneducated and the friendless; that they go far beyond restrictions upon personal freedom or diminutions of temporal advantage; that they involve the very greatest of physical evils to which humanity is subject in the extinction of life itself.

Hale must have known that life is a thing sui generis; that man alone is endowed with power to calculate the importance of life in reference to every actual and probable, every present and future, capacity of enjoyment; that even the merit of resigning life consists in the voluntary sacrifice of what we conceive to be the choicest blessing; that to our experience, our reason, and our instinctive sentiments, the act of taking away life unjustly, appears the most heinous outrage man can offer to man; that such injustice against life is possible at least in the deliberate ordinances of states, as well as the sudden resolves of individuals; that the indiscriminate or inconsiderate destruction of life for the purpose of punishment, forms one of the leading distinctions, not only between a barbarous and a civilized people, but between a tyrannous and an equitable government; that all questions concerning life have inherent and specific properties, which are in some respects incommunicable to any other questions; that we can remove or mitigate bodily pain as well as inflict it; that we can decree the restoration as well as the forfeiture of liberty and property, but that we cannot give life at all; that upon the discovery of circumstances favourable to the sufferer, we cannot restore life when once taken away,* and therefore that the utmost caution becomes us, as sensitive, as

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* "Τῶν μὲν ἀξιολόγων ἁμαρτημάτων, μεγάλαι καὶ αἱ κολάσεις εἰσίν· ὥστε ἀδίκως καταψηφισαμένοις καὶ μὴ γνοῦσιν, οὐκ ἔστιν ἐπανορθοῦσθαι, καιρὸν λαβόντας."—Aristot. Prob. sec. 29.

social, and as religious beings, before we authoritatively determine the conditions upon which a fellow-creature is to be subjected to a violent and ignominious death. He must have known that temporary alarms have often given rise to penal laws, the rigour of which has not been relaxed when the real or the seeming danger had passed away. He must have known that even in the solemn process of legislation the passions of men are sometimes more than a match for their reason, and that sudden fear oversteps the boundaries which discretion, at once calm and vigilant, would prescribe. He must have known that long usage produces an unwillingness to relax and even review, or I should rather say an alacrity in enforcing, a stubbornness in retaining, a proud and captious jealousy in vindicating, those penalties which long trial shows to have been inefficacious for the prevention of offences. He must have known that remissness or error more frequently occasions feeble laws than deliberate lenity, and that greater evils arise to society from the negligent or unsteady administration, than from the total want of those laws which are rigorous.

If, in the nature of things, as Andronicus tells us,* it is impossible "τὰ κατὰ μέρος πάντα περιλαβεῖν ἀόριστα ὄντα"—if the lawgiver is obliged "τὸ ἐπὶ πλεόν περιλαμβάνειν," and if the laws themselves are compelled "καθόλου διορίζεθαι," or as Aristotle says, "περὶ ἐνίων οὐκ οἴοντε ὀρθῶς εἰπεῖν καθόλου,"† Hale must have known that for these very reasons the general sanctions of the law should be in some degree accommodated to the incalculable differences of demerit in particular actions, and that in order to become so, they should partake rather of mildness than severity. He must have known that "the conceptions of men on the gradations of criminality are greatly affected by the promiscuous application of punishments;" that by "withholding distinctions in the nature of those punishments, we inure their minds to confound the higher and the lower measures of guilt;" that "the law of nature, where there is no convention to the contrary, limits the right of the magistrate to the

* Vid. Andronic. Rhod. cap. 16. lib. v.

† Aristotel. Ethic. lib. v. cap. 2.

use of such measures as are necessary to the defence of the innocent or the prevention of wrongs; that all severities employed beyond those limits," are inconsistent with the fundamental conditions implied at least in that very convention, into "which men enter when societies are formed;" and that, "after the existence of express conventions, the magistrate can have no right to inflict more punishments than are necessary to obtain the purpose for which the parties contracted, that is, more than are necessary to restrain crimes, and keep the peace of society;" that a just gradation of punishment has for its object not "to let liberty pluck justice by the nose," but to restrain justice from "bruising to death," where by "cutting keenly" it can "give fear to use and liberty,"* not to "let the guilty escape, but to make the innocent eventually more safe," by regulations in which the purposes of lenity and expediency are alike consulted, and of which the guilty and the innocent would alike approve, if the grounds and tendencies of such regulations were proposed to their calm and unbiassed reason; and that "although the principle of defence strictly applied would justify that punishment, whatsoever it may be, which is necessary to repress a crime, yet, in some instances, prudence as well as humanity would reject this authority, and recoil at the application of a punishment against which human nature would revolt more than against the crime itself." † Hale must have known some few instances of legislative reasoning not very dissimilar to the logic of those ecclesiastical disciplinarians, who, "because the church of Rome was constructively guilty of idolatry in the doctrine of transubstantiation and the practice grounded upon it, and because under the Jewish law prophets who persuaded to idolatry were to be slain," recommended by implication the same wholesome severities to Christians; and surely in opposition to arguments so futile, applied to purposes so terrible, he must have thought with Bishop Taylor, "here we must deliberate, for it is concerning the lives of men."‡

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* Shakspeare.

† See Ferguson's Principles of Moral and Political Science, part 2. chap. iii. sect 10, and chap. iv. sect. 3.

‡ Liberty of Prophesying, sect. 20.

Hale must have known, that in cases of very aggravated thievery, the injured party puts a much higher value upon his own existence than upon his own property. He must have known, that the claims of individuals to redress for a particular wrong, and of society to protection from a repetition of it, rest upon general principles of justice, in which every member of the community, yet innocent, has a contingent, as every guilty one has an immediate interest, and which forbid us to inflict the heavier punishment, where the lighter would upon the whole be equally efficacious for the commonweal—he must have known, that our just and habitual indignation against a general class of actions* is easily set in motion, and suddenly runs into excess

* I have observed that in trials for capital offences the counsel for the accusation is permitted to make an opening speech, and that he often introduces general and declamatory matter, which powerfully affects the minds of the Jury, and to which no reply can, according to the practice of the Court, be made by the counsel for the prisoner. Upon these occasions I have often recollected what Cicero says in defence of his client Cælius; and though the accusers of Cælius adverted only to subjects of licentiousness, the principle upon which Cicero argues may be applied to all general observations upon the nature of crimes, when they have a tendency to mislead and inflame the Court against an individual. "Ut tibi reum neminem, sed vitia proponas, res tamen ipsa et copiose et graviter accusari potest: sed vestræ sapientiæ est, judices non abduci ab reo; nec quos aculeos habeat severitas, gravitasque vestra, cum eos accusator erexerit in rem, in vitia, in mores, in tempora, emittere in hominem et in reum." (Orat. pro M. Cælio, Paragr. 29.) From this mischievous display of talent there is a most powerful dissuasive in Hales's remarks concerning the gifts of elocution." Much as I have been delighted and interested by the representations which Plato and Xenophon have given of their illustrious contemporary Socrates, I confess myself to have been equally delighted and more interested by Hale's "Account of the good steward," in which the above-mentioned remarks may be found. "It is the very picture," as says the editor, "wherein representing the good steward passing his account, it was impossible for him not to give a lively representation of himself;" and rarely do we meet with an instance in which any man speaks so unreservedly and so largely of his own opinions and actions with so much propriety. "His words are significant, perspicuous, manly, vox non ex ore, sed pectore emissa." Upon every account of matter, style, and

against the persons who are accused of committing them; that it warps the operation of our judgment in balancing the probabilities of circumstantial evidence, and calculating the niceties of circumstantial extenuations; that it pushes a part even of our benevolent affections into a sort of violence quite inconsistent with the proper duties of benevolence itself; and that to our affrighted imaginations and our misguided conscience it palliates and even recommends cruel retaliation,* by associating the effects of it with our regard to public utility, and the motives to it with our sincere and virtuous hatred of cruelty itself—he must have known, that man is often the creature of involuntary circumstances, which more or less usurp an undue control over his voluntary actions, and which, therefore, bring his weakness as well as his wickedness under the consideration, not of pity only, but of sound and impartial wisdom—he must have known that, under the influence of that moral sense to which all legislators

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spirit, it is a work which deserves to be read every year by every "Light of the church, and every sage of the law" in Christendom.

* Such was the just, but excessive, indignation of the Romans "qui dedi Decemviros æquum censebant, vivosque igni eos crematuros minitabantur:" but the legati well observed to them, "iræ vestræ magis ignoscendum quam indulgendum est, quippe qui crudelitatis odio in crudelitatem ruitis."—Liv. lib. iii. sect. 53. Such, too, was the language of Heraclea to the Syracusans, when actuated by a just but undistinguishing rage against the execrable oppression of Hieronymus, they had obtained a decree for the extirpation of his whole family: "omissis pro se precibus, puellis ut saltem parcerent, orare institit, à quâ ætate ætiam hostes iratos abstinere, ne tyrannos ulsciscendo, quæ odissent scelera, ipsi imitarentur."—Livy, lib. xxiv. sect. 26. Possible it is, that in seasons of sudden and tumultuous alarm, from the prevalence of crimes affecting the interests of private life, well-meaning legislators may now and then have been impelled to the same severities, which in the instances above-mentioned are recorded of blind and infuriate multitudes.

The aversion of George II. to capital executions is well known, and to the honour of the reigning Sovereign be it spoken, his prerogative has for many years past been frequently exercised in favour of condemned criminals, and without any known danger to the authority of the laws or the security of the public.

and all judges appeal, upon the presumption that however enfeebled, it is not wholly extinguished, even culprits form some vague notions of proportion* between offence and punishment; that the errors of such men are more to be dreaded, because they are more immediately connected with practice; that from the suggestions of self-delusion they will be more exposed to error by the continuance of severities, which wiser men than themselves discern and lament; that their own remaining respect for justice will be weakened more and more by visible injustice in those laws which they have themselves violated, and which even others who obey them are unable to approve; that to their minds, labour, confinement, infamy, banishment, may appear more formidable, as well as more reasonable penalties, than the infliction of death; that even death itself, when contemplated at a distance, and when alone it can operate as a restraint, may be considered as a release† from hunger and thirst, from cold and misery, from cheerless prisons and galling fetters,

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* We have proportion in view, when in common language we say that a man suffered the punishment *due* to his crime. The Aristotelian school used peculiar terms for justice in the distribution of rewards and punishments: "Καλεῖται δικαιοπράγημα μὲν πᾶσα πρᾶξις δίκαια, κἂν τε ἀδικίας ἔκτισις ᾖ, κἂν τε ἀρετῆς ἀνταπόδοσις· δικαίωμα δὲ ἰδίως, ἡ τῆς ἀδικίας τιμωρία."—Andronic. Rhod. Eth. Nicomach. Paraphr. lib. iv. cap. 11. In conformity to this distinction, we read, "Ὁ μὲν ἀδικῶν κολαζόμενος ἀκουσίως δικαιοῦται· ὁ ἀδικούμενος ἐκδικούμενος, ἑκουσίως δικαιοῦται." —Id. cap. 13.

† In an extract from the Danish ritual, given us by Dr. Nicholls, in the second volume of his Commentary on the Common Prayer, it is directed that "when a malefactor is to be led to the place of execution, he be exhorted heartily to rejoice that every step he makes brings him nearer to his liberty, where he shall see no sorrow, no fetters, no prisons any more." But these very circumstances, which console the dying malefactor, may, under another aspect, embolden the offender, when before the commission of a crime he looks upon the punishment of it as a deliverance from "sorrow, fetters, and prisons." We naturally wish for some alleviation of impending evil, and the mischief is, that we find encouragement to wickedness in that which ought to be only a solace to grief. Legislators ought to take into their calculations this well-known and most pernicious propensity of the human mind.

from the frowns of the prosperous and the menaces of the powerful; that from the prospect of death, while it continues to be painful, they may endeavour to find some relief by accustoming themselves to sullen indifference or gay defiance; and that even their fears, if they degenerate into cowardice, may not lead to reformation, but induce them to substitute a mischievous cunning for that boldness which is not always incapable of a temporary alliance with virtue. Hale must have known that the appearance of heroism is captivating to common minds, and that it is supposed to consist, not in the patient endurance of long-continued evils, be they chains, or solitude, or dungeons, but in that firmness of soul which bears up against one vast and mighty danger, from which nature usually shrinks. He must have known, that by the perversion of that constitutional courage which animates better men to better things, a criminal might be led to shake off the apprehension of death as a weakness disgraceful to his nature, and by calling in the aid of pride and rage, to fortify himself in a secret or open contempt of the last severity which human authority or human vengeance can employ. He must have known that when fear ceases obduracy begins, and gradually prepares men for perpetrating the greatest crimes with the least compunction. Hale must have known farther, that "authority, though it may err like others, hath a kind of medicine in itself, that skins the vice o' the top." He must have known, that in all ages and in all countries "man, proud man, drest in a little brief authority," is sometimes "most ignorant of what he is most assured;" and that, measuring his duty by his power, he will now and then "play such fantastic tricks before high heaven, as make the angels weep." He must have believed,

> "No ceremony, that to great ones 'longs,
> Not to the King's crown, nor the deputed sword,
> The marshal's truncheon, nor the judge's robe,
> Becomes them with one half so good a grace
> As mercy does."*

Finally, he must have observed, and he must have felt, that from the unseen, unsuspected, unalterable influence of moral

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* Measure for Measure.

causes upon a being so short-sighted and so imperfect as man, a very slight difference in external situation may ultimately, though imperceptibly, lead to most important differences in conduct, and that if he had been himself placed and tempted, as many culprits were, he might himself "like them," have sometimes "slipped."

Under these awful impressions, the wise, humane, and pious Hale must often have had occasion to exclaim, as Boerhaave was said to do, when a criminal was condemned to die,* "May not this man be better than I? If otherwise, the praise is due not to me, but the grace of God."†

Such, dear Sir, are the fixed and serious sentiments of one, who for many years has been a very attentive observer of judicial proceedings; of one, who is no stranger to the pleas usually alleged for the rigour of our laws, or to the effects really produced by it; of one, who has often thought it "the charitable duty of his Order," to prepare malefactors for eternity by lessons of resignation and repentance; of one who, while he soothed them by consolation when they were about to taste "the bitterness of death," rarely failed to explore the deepest recesses of their hearts; of one who, upon a view of all circumstances, has

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* "A worthy prelate of the Church of England once said upon seeing a criminal led to execution, 'There goes my wicked self.' Considering the vices to which the frailty of human nature exposes whole families of every rank and class in life, it becomes us, whenever we see a fellow-creature led to public infamy and pain, to add further, 'There goes my unhappy father, my unhappy brother, or my unhappy son." I found the foregoing passage in p. 17 of an Inquiry into the Effects of Public Punishments upon Criminals and Society, published in Philadelphia 1787. I differ from the enlightened author of it in his objections to the publicity of capital punishments, though I believe that in some few cases privacy in the infliction of other punishments, and even uncertainty as to their duration, might increase their effect. But the experiment should be made with caution. Who the prelate was I cannot determine; but he understood human nature, and what is better, he has exemplified the celestial rule, γνῶθι σεαυτὸν.

† See Life of Boerhaave, p. 56. Part of the words are quoted by Johnson in No. 114 of the Rambler, where the reader will find many just and serious reflections on the rigour of our penal laws.

been yet more rarely satisfied with that sentence which doomed his fellow-creatures "to die"—"to go they knew not whither" —to be sent to their last solemn account "with all their imperfections on their head," when from the scantiness of their education, the untowardness of their habits, the inquietude of their spirits, and the shortened span of their existence, little or no "reckoning could be made." Oh! horrible! most horrible!

Doubtless there are subjects upon which the maxim "sua cuique in arte credendum est," may be admitted to a great extent. But the general principles of jurisprudence, and the practical effects of those laws which inflict death, are within the reach of every man who has formed habits of reflection, and who has been blessed with the advantages of a liberal education. But if professional men should exclaim, as they are wont to do, contemptuously, "tractent fabilia fabri," I should remind them, that I am speaking of those by whom laws are made, rather than those by whom they are administered, and that for my opinion upon this topic I can find protection in the wise and humane observations of a well-known and justly-celebrated writer: "The crimes of such a man as Barnardine, careless, reckless, and fearless of what is past, present, or to come, may perhaps have made him unfit to live; but he is certainly unfit to die. The safety of the community, and the preservation of individuals, may call for his execution; but the bosom of humanity will heave in agony at the idea, the eye of religion will turn with horror from the spectacle.

"Suppose the sufferer, on the contrary, to have been a valuable member of society, and to have erred only from some momentary impulse of our imperfect nature, one who in the recollection of reason hath found repentance; who resigns with cheerfulness that life which is become a forfeiture to the law, and looks up in confidence to heaven for that forgiveness which is not to be found on earth. The last footsteps of such a man are watered with the tears of his fellow-citizens, and we hear from the mouth of every spectator,

"Yes, I do think that you might pardon him,
And neither heaven nor man grieve at the mercy."*

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* Eden's Principles of Penal Law, cap. iii.

At such a moment the most flinty-hearted man would be ashamed to insist upon the topics which were recommended to a mere pleader: "Locus inducetur ille per quem hortandi judices erunt, ut veterem famam hominis nihil ad rem putent pertinere, nam eum ante celasse, nunc manifesto teneri; quare non oportere hanc rem ex superiori vita spectari, sed superiorem vitam ex hac re improbari, et aut potestatem ante peccandi non fuisse, aut causam."*

For my general dissatisfaction with the penal law of England I have the authority of a yet greater writer, who occasionally found room to remark some particulars which seemed to want revision and amendment, and which had chiefly arisen from those causes to which in part I have myself applied them. It is impossible to read his masterly chapter on the national crimes and their punishments, without perceiving that he looked with no favourable eye on the frequency of our capital punishments, "upon too scrupulous an adherence to some rules of the ancient common laws, where the reasons have ceased on which those rules were founded; upon not repealing such of the old penal laws as are obsolete or absurd; and upon too little care and attention in framing new ones." "It is a kind of quackery," he says, "in government, and argues a want of skill to apply the same universal remedy, the *ultimum supplicium* to every case of difficulty. It is, it must be owned, much easier to extirpate than to amend mankind; yet that magistrate must be esteemed both a weak and a cruel surgeon who cuts off every limb which through indolence or ignorance he will not attempt to cure."† The language of Blackstone is, indeed, as it ought to be, wary and temperate. But his real opinions and his real wishes are sufficiently intelligible; and they who for their own instruction have read the conclusion of this chapter, may be content to read it again, when produced, as it now is, for my own vindication. "Robbers," says he, "in England have a hope of transportation, which seldom extends to murderers. This has the same effect here as in China, in preventing frequent assassination and slaughter."

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* Cicero de Inventione, lib. ii. vol. i. p. 77. ed. Gruter.
† Blackstone, vol. iv. cap. i.

"Yet though in this instance we may glory in the wisdom of the English law, we shall find it more difficult to justify the frequency of capital punishment to be found therein, inflicted (perhaps inattentively) by a multitude of successive indefensible statutes upon crimes very different in their natures. It is a melancholy truth, that among the variety of actions which men are daily liable to commit, no less than an hundred and sixty have been declared by Act of Parliament to be felonies without benefit of clergy, or in other words to be worthy of instant death. So dreadful a list, instead of diminishing, increases the number of offenders. The injured through compassion will often forbear to prosecute; juries through compassion will sometimes forget their oaths, and either acquit the guilty or mitigate the nature of the offence; and judges through compassion will respite one half of the convicts and recommend them to royal mercy. Among so many chances of escaping, the needy and hardened offender overlooks the multitude that suffer; he boldly engages in some desperate attempt to relieve his wants or supply his vices; and if unexpectedly the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling at last a sacrifice to those laws which long impunity had taught him to contemn."*

The acute and indignant author of a Fragment on Government will, I think, be ready to allow that in the foregoing passage Blackstone has sustained the part not merely of "an expositor who is to show what the legislator, and his under workman the judge, had done already," but of "a censor, to whom it belongs to suggest what the legislator ought to do in future."† So strong, however, is the reasoning, and so just are the views of the writer here mentioned, that I think myself bound to introduce what he has written upon the propriety and usefulness of revising our laws. I shall take the substance of his observations, but omit some sharp strictures which are interwoven with them.

"Those who duly consider upon what slight and trivial‡ cir-

* Blackstone, book iv. chap. 1.

† Preface, p. 10.

‡ This remark may sometimes be applied to the interpretation of penal laws. See the case of a prisoner tried by Hale at

cumstances, even in the happiest times, the adoption or rejection of a law so often turn; circumstances with which the utility of it has no imaginable connection—those who consider the desolate and abject state of the human intellect, during the periods in which so great a part of the still subsisting mass of institutions had their birth—those who consider the backwardness there is in most men, unless when spurred by personal interests or resentments, to run a tilt against the colossus of authority—those, I say, who give these considerations their full weight; will not be zealous to terrify men from setting up what is now 'private judgment,' against what once was 'public;' nor to thunder down the harsh epithet of 'arrogance' on those who, with whatever success, are occupied in bringing rude establishments to the test of polished reason. They will rather do what they can to cherish a disposition at once so useful and rare,* which is so little connected with the causes that make popular discontentment dangerous, and which finds so little aliment in those propensities which govern the multitude of men. They will acknowledge, that if there be some institutions which it is 'arrogance' to attack, there may be others which it is effrontery to defend. Tourreil has defended torture; torture, established by the 'public judgment' of so many enlightened nations. Beccaria has condemned it. Of those two whose lot among men would one choose—the apologist's or the censor's?"

They who look to things rather than men, to reason than to names, may derive, as I have done, the most valuable information, and feel, as I have done, the strongest conviction, from the works of the writer whose opinions I have just now pro-

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Cambridge for burglary, when all doubts upon the nature of his crime were removed by the trivial accident of some bricks having fallen down the chimney through which he descended into the house. "Such deviations," says Mr. Eden, "of sound sense into sophistry, are too often the effect of legal reasoning."—Page 326.

* "When Beccaria came, he was received by the intelligent as an angel from heaven would be by the faithful. He may be styled the father of censorial jurisprudence. Montesquieu's was a work of the mixed kind. Before Montesquieu all was unmixed barbarism. Grotius and Puffendorf were to censorial jurisprudence what the schoolmen were to natural philosophy."—Preface, p. xix. to Fragment on Government.

duced. He holds a distinguished place in that small number of sages who will "echo to the sentiments of Beccaria from the bottom of their hearts, and co-operate with him in giving effect to the voice, which if it be the voice of one philosopher only might be too weak to be heard amidst the clamours of a multitude blindly influenced by custom." * But the progress of civilization, science, and sound religion, has prepared even the multitude for such punishments as are less offensive than those which are now inflicted, to the sense of humanity and of justice. Enlightened men, as we have seen, plead for some reform, and the necessity of that reform was discerned long ago by a celebrated writer, under the shelter of whose name I will conclude these remarks. Lord Coke, in his Epilogue to his third Institute, which treats of the Crown Law, after observing that frequent punishment does not prevent crimes, says, "What a lamentable case it is that so many Christian men and women should be strangled on that cursed tree of the gallows; insomuch as if in a large field a man might see together all the Christians that but in one year come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion."

His Lordship then proceeds to shew, that the method of preventing crimes is, "first, by training up youth in the principles of religion and habits of industry. Secondly, in the execution of good laws. Thirdly, in the granting pardons very rarely, and upon good reasons." He then concludes, "that the consideration of this prevention were worthy of the wisdom of Parliament, and in the mean time expert and wise men to make preparation for the same, ut benedicat eis dominus. Blessed shall he be that layeth the first stone of the building; more blessed that proceeds in it; most of all that finisheth it to the glory of God, and the honour of our king and nation." †

Long after I had written thus far, Sir Samuel Romilly, whose name I never mention without veneration, moved in the House of Commons for the repeal of the law against private stealing

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* See Beccaria, chap. xxviii.

† See Introduction to first edition of Dagge's Considerations of Criminal Law, p. 74, vol. iii.

from the person. He supported the motion with his usual accuracy of information and acuteness of reasoning. The bill has passed both Houses of Parliament, but with amendments in which the mover probably acquiesced upon the principle of surrendering a part lest the whole should be wrested from him. The objections I should have urged against those amendments seemed to me not unimportant, and therefore I shall proceed to state them temperately but unreservedly, and to intermix with them copiously such general reflections as they may incidentally suggest to my mind.

Acts of legislation are too momentous in their consequences to be debased by ostentatious courtesy, or wanton rudeness, to any members or any classes of the community. In the discussion of political topics, men of observation see only folly, or affectation, or flattery, in the profession of separating measures from men; and surely in the more solemn process of enacting penal laws, the framers of them ought to keep in view the possible imperfections of those who are to administer, as well as the actual malignity of those who may violate them. Corruption, I grant, would in English judges be a prodigy quite as rare as parricide is said to have been among the old Greeks. To none of those venerable men, who now adorn our courts, deliberate cruelty can be imputed in trials for capital crimes, and if it were not invidious to particularize individuals, I should be happy to pay the tribute of my praise to the great sagacity and great lenity of some persons whom I could point out by name. But I mean to give no offence, and I hope that none will be taken, when I say, that upon questions by the decision of which the life or the liberty of man is to be forfeited, it is more safe and more becoming for legislators to trust in the energy of the laws themselves, than to repose very large confidence in the discretion of any one human being.

Let me not be accused of singularity, when I express my concern that in the administration of public justice too much is already granted to the persons who administer it. "By the indulgence of judges, not by the provisions of law, a prisoner indicted for felony is now allowed counsel to stand by him at the bar, and instruct him what questions to ask, or even to ask

questions for him in matters of fact."* But one judge may refuse what another would grant, and the consequence of such refusal may be the omission of questions, which, if well proposed and well answered, might lead to the acquittal of the accused. Hence, with all his real or all his supposed spirit of optimism, Blackstone calls this "a matter of too great importance to be left to the pleasure of any Judge, and worthy of the interposition of the legislature." He thinks that interposition necessary, though he was sensible that in the absence of an advocate to assist a prisoner, the judge is generally presumed to sustain the office of a counsel.

In regard to cases not wholly unconnected with the views of a ministry, or the spirit of a court, it would be unfair to prejudge any body of men, especially as our constitution may be supposed to invest us with the right of arraigning seriously and discussing argumentively any real impropriety in their conduct, when such cases occur. But in transactions between subject and subject the history of our country, and indeed my own immediate observation, would induce me to give a confidence nearly unlimited, where the collective wisdom of the twelve judges is employed in ascertaining the import of a penal statute; and well does it behove every Englishman to remember, that when the disproportion of numbers between measures of lenity and measures of rigour is not very wide, this circumstance, though it may not produce direct acquittal, as an equality† of votes formerly did before the tribunal of Areopagus, generally protects a culprit from ignominious execution. Yet I have often wished, not perhaps for the abolition, but the limitation of that discretion, which is now exercised by single judges, and even single courts, in decreeing the pillory or transportation, and in fixing the quantity of a fine, or the duration of imprisonment. In truth, I have never heard a satisfactory reason why the law could not be so well understood by twelve honest jurymen, or so well interpreted to them, as to qualify them for proportioning the punishment, when they have pronounced a verdict upon the crime.

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* See Blackstone, book iv. cap. 27.

† Euripid. Elec. verse 1269. Æschyl. Eumenid. verse 744, and Aristotel. Problem, sect. 29.

"Where an established penalty," says Blackstone, "is annexed to crimes, the criminals read their certain consequence, in that law which ought to be the unvaried rule, as it is the inflexible judge of their actions. The discretionary fines, and discretionary length of imprisonment, which our courts are enabled to impose, may seem an exception to this rule. But the general nature of the punishment, viz. by fine or imprisonment, is in these cases fixed and determinate, though the duration and quantity of each must frequently vary from the aggravations or otherwise of the offence, the quality and condition of the parties, and from innumerable other circumstances."*

It affords but little satisfaction, I confess, to my mind, to be told that the law has fixed the nature of the punishment, when there may be many differences in the degrees of it, and when the choice of those degrees is to be left to any one man. Laws we may suppose in some countries so to fix by a general term the nature of punishment for some offences, as to make it amount to death. But shall it be left to the judge only to determine whether that death should be inflicted by the rope or the axe, the racking wheel, or the slowly consuming fire? The English laws denounce imprisonment and transportation. But is it not a question of great moment to delinquents, and to the community, whether the imprisonment be for one or two or five years, and whether transportation be to continue for seven or fourteen years, or for life? What, I must ask, can in any offence be the circumstances which a jury may not understand quite as well as a judge? That the quantity of particular fines neither ought to be, nor indeed can be, ascertained by any invariable law; that the current value of money, and the greater or the less wealth of the delinquent, will introduce material differences; that the Bill of Rights has declared all excessive fines unfit to be imposed, and all unusual punishments unfit to be inflicted, are facts quite as intelligible, and restraints quite as powerful, to juries as to judges, and surely upon all occasions with the assistance of the judges, jurymen may give proper effect to the laws in fixing the quantity of fines, and the term of imprisonment or transportation. Without any invidious retrospect to the decisions of the

* See Blackstone, book iv. chap. 29.

Star Chamber against Burton, Pym, and Bastwick, or to some unprecedented proceedings in the reign of James II. intelligent men may in later times meet with strong reasons to lament that the adjudication of fine or imprisonment in criminal cases should be left exclusively with the judges. It is the punishment, not the mere trial, which deters offenders and secures the community; and wheresoever such punishment is to be inflicted, I should, *mutatis mutandis*, apply the observation of Sir Matthew Hale upon capital punishments. "It were a most unhappy case for the judge himself if the prisoner's fate depended upon his direction" in the quantum of the punishment, "unhappy also for the prisoner." If the judge's opinion alone is to fix the punishment, the trial by jury is far less useful than it ought to be in a country which boasts of such trial as the great palladium of its social rights, and which has long found in it sufficient protection for the safety of unoffending individuals and the peace of the community.*

Every judge, be it said with great reverence for his office, is a frail individual, and whatsoever may be his wisdom or his integrity, my observation upon human nature would never induce me to invest him solely with the power of choosing between the milder and the heavier punishment "of the same nature." "More, in his Utopia, has declared himself freely and fully against putting thieves to death. And in the same charitable and reasonable way of thinking Erasmus agreed with him."† "But he was a notable tyrant," said old Luther, indignantly and justly. "He was one of the bitterest enemies," says Burnet, "of the new preachers, not without great cruelty when he came into power, though he was otherwise a very good-natured man; and though, in the opinion of Dr. Jortin, "he had once been free from that bigotry which grew upon him afterwards in life." Yes, the philosophy, the sagacity, the piety, the benevolence of More, did not preserve him from the reigning prejudices of his day against the crime of heresy; and they who will consult Mr. Lysons's excellent work on the Environs of London, will be led to many serious reflections upon human infirmity, when they read the wanton cruelties which in More's presence, or even by

* See Blackstone, book iv. chap. 27.
† See Jortin's Life of Erasmus, p. 174.

his own hand, were exercised against heretics at a tree which he employed for this very purpose in his garden at Hammersmith. For his holy, but barbarous zeal, he could easily find pretexts, such as disgust and shock us, when produced by other apologists for rigour upon other occasions. Thus he writes in a letter to Erasmus, "Quod in Epitaphio profiteor me fuisse molestum, hoc ambitiose feci. Nam omnino sic illud hominum genus odi, ut illis, nisi resipiscant, tam invisus esse velim, quam qui maxime, quippe quos indies magis ac magis experior tales, ut mundo ab illis vehementer metuam."*

Who would dare to dispute the erudition, the integrity, or the wisdom of Sir Matthew Hale? Who can read with indifference the reasons which, with his usual modesty and sincerity, he assigns for declining the judicial office, and in which he represents himself as having too much pity, clemency, and tenderness in cases of life, which may prove an unserviceable temper for bustling?"†

"Mitis precibus, pietatis abundans,
Pœnæ parcus erat."‡

Yet so far did he share in the credulity of his contemporaries about witchcraft, that in the Suffolk Sessions of 1664 he not only condemned two widows of Leystoff, but suffered judgment to be executed upon them; and even the learned Sir Thomas Brown, who wrote against vulgar errors, is said upon this occasion to "have declared himself in court to be clearly of opinion, that the fits of the patients were natural, but heightened by the devil co-operating with the malice of the witches, and to have confirmed that opinion by a similar case in Denmark, and so far influenced the jury that the two women were hanged."§

I know not that Judge Powel was a weak, or a hard-hearted man. But I do know that in the Augustan age of English literature and science, when our country was adorned by a Newton,

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* See Life of Erasmus, p. 190.

† See p. xi. of Mr. Hargrave's interesting Preface to vol. i. of a Collection of Tracts relative to the Law of England, from MSS. first "edited" by him in 1787.

‡ Claudian de IV. Cons. Honor. l. 113.

§ See Gough's British Topography. The cases mentioned in the next paragraph may be found in the same book, vol. ii. p. 255.

a Halley, a Swift, a Clarke, and an Addison, this judge in 1712 condemned Jane Wenham at Hertford, who in consequence perhaps of a controversy that arose upon her case, rather than from any interposition of Powel, was not executed; and that four years afterwards he at Huntingdon condemned for the same crime Mary Hickes and her daughter Elizabeth, an infant of eleven years old, who were executed on Saturday the 17th of July, 1716. At the beginning of the same century, of which English philosophers and English scholars talk with triumph, two unhappy wretches were hung at Northampton, the 17th of March, 1705; and upon July the 22d, 1712, five other witches suffered the same fate at the same place. The judges who tried them might be very wise and upright men. But they were terrified at witchcraft, and employed all the wholesome severities which the laws had provided against it. We are no longer scared at witchcraft. But can it be said that we are none of us subject to unreasonable and excessive prejudice against other offences, real or supposed?

"Suus cuique attributus est error;
Sed non videmus manticæ quod in tergo est."*

From original temperament, from early education, from experience of personal inconvenience, and from various other causes scarcely known to ourselves, we all of us feel a stronger aversion to some offences than to others. One man is alarmed at public robbery, another takes fright at private stealing, a third startles at heresy as bordering upon infidelity, a fourth kindles at republicanism as teeming with treason; and each, if it were in his power, would wreak the utmost of his vengeance upon the offender. But can it be right that the life, or the liberty, or the fortune of any human being should be dependent upon the greater or less degree of these moral idiosyncracies?

"Quid leges sine moribus vanæ proficiunt," was the question of one † who had looked with an attentive eye upon human life. But there is another question of equal importance. What avail the best laws without judicious and steady administration? Slow as may be the growth of useful laws themselves, I am convinced

* Catullus, Carm. 90. † Horace.

that the art of administering them well is yet slower. The suggestions of zealous and ingenious men, the temporary exigencies of society, a spirit of emulation in one state towards another, often give rise to the enactment of laws which in appearance tend to the public good. But the previous habits and opinions of a people may for a time present unforeseen and stubborn obstacles to the execution of them: and long it sometimes is before the prejudices or the corruptions of society are sufficiently subdued for the regulations of lawgivers to produce their proper and full effect. For this reason I have ever been anxious that the administration of laws among ourselves should stand free from every well-founded objection. Sure I am that in other countries, where some of the laws may appear more excellent than our own, the general method of administering them is much less correspondent to the original views of the legislator, and much less favourable to human happiness. My wish is to extend and to confirm the claims of my countrymen to this peculiar and noble praise.

In my remarks, then, on the practice of our Courts, where the nature of the punishment as appointed by the laws is not changed, but the extent of it is in many cases reserved for the discretion of Judges, I do not mean to insinuate that power is very frequently abused; and in the vigilance of public opinion, as well as in the virtue of Judges, I see many checks upon that abuse. But the mere possibility of it is an evil; and while juries are employed, I am acquainted with no good which could not be easily and constantly obtained, if the evil, to which I advert, were wholly removed. Were the attempt to remove it made by a firm and enlightened legislature, I am confident that the approbation of the public, founded on their progressive experience, would give additional weight to the authority of a statute.

"It is a maxim in politics," says Mr. Hume, "which we readily admit as undisputed and universal, 'That a power, however great, when granted by law to an eminent magistrate, is not so dangerous to liberty, as an authority, however inconsiderable, which he acquires from violence and usurpation.'"* But there is a gradual and silent extension of power, which in its effects

* Vol. i. Essay 10.

is scarcely less pernicious than usurpation, when under specious pretexts of necessity, it has been permitted to answer other purposes than those for which it was primarily conferred, and when having imperceptibly obtained the force of immemorial usage, it represses all investigation into its comparative merits and demerits in the actual business of life. Whatsoever in the degrees of punishment has been negligently overlooked or imperfectly defined in the laws themselves, leaves room for the discretion of the judge to introduce severities for which particular cases will often furnish particular reasons. One precedent not only produces direct imitation, but paves the way for other precedents not expressly interdicted by the general rule; and whensoever bodies of men suppose their authority to be interested in the continuance of the practice, advocates are always at hand to set up usage in answer to utility, and even to maintain, in opposition to facts, that the existence of usage itself is always a presumptive proof of utility. But he that looks back to the history of mankind will often see, that in politics, jurisprudence, religion, and all the great concerns of society, reform has been usually the work of reason slowly awakening from the lethargy of ignorance, gradually acquiring confidence in her own strength, and ultimately triumphing over the dominion of prejudice and custom.

In conformity to the opinions I have just now stated, I must confess, that instead of approving the modifications lately recommended by a most excellent man,* I should have been better pleased if the power of assigning a greater or a less punishment for private stealing had been vested jointly in the judge who presided, and the jury who tried the cause—or, if the jury, after hearing and considering the arguments of the judge, had been permitted to decide ultimately; and as in this statute the degree of punishment is less definite than upon other occasions, the inconvenience of such uncertainty might be lessened, if in any case where the aggravating circumstances were doubtful,

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* Sir Thomas Plomer, now Solicitor-General; and highly esteemed, when a young man, for his classical learning, by the late Dr. Foster, Master of Eton, Sir William Jones, and the writer of this note.

some interval had been directed to pass with the consent of both, between the verdict and the sentence. A general fact may be easily understood. But the minute and numerous circumstances upon which the gradations of guilt, and of the chastisement to be inflicted upon the guilty, must often depend, ought to be weighed with the utmost care, and at a season, let me add, when the remembrance of evidence is fresh, and when the judgment is quite unclouded by any of those passions which in the course of a trial are frequently excited in the breasts of the most compassionate and the most intelligent. I speak not of the inconvenience which may now and then arise where the crime and the punishment are definite, and where, if the fact be found by the jury, the law gives no alternative to the judge. The crime, indeed, of privately stealing is now made definite, so far as a class of things can be described in legal terms. The punishment, however, for very wise and humane reasons, is in some respects indefinite. But if the lover of power, or predilection for a profession be disclaimed, I am at a loss to conjecture any solid reason why it should be granted to the jury to decide upon the crime, and left with the judge indiscriminately and exclusively to appoint the punishment. Is it meant to furnish a precedent for all future proceedings of the legislature, when death is to be commuted for a penalty less severe? I hope not. Is there any peculiar property in the offence of private stealing, which renders it unfit for juries to decide on the greater or the less guilt of the criminal? I see it not. Have not juries the same interest with judges in the prevention of offences, the same regard for the general welfare of society, the same veneration for the sanctity of an oath, and the same capacity to calculate upon such an occasion the physical effects of pain, as upon other occasions they are allowed to have in determining the illegal qualities of actions? It were an insult to the judicial character even to insinuate that they who now sustain it can never be touched with "a sense of our infirmities," and in the instance of private stealing the insinuation were untrue, as well as contumelious. Pity, we know, has produced an habitual and a visible unwillingness in juries to enforce with all possible strictness, the law, as it formerly stood against that offence.. But the same pity has also induced judges to search for circumstances of extenuation, to found upon them

distinctions which might lead to acquittal from the capital part of the charge, and in appearance, at least, to evade the very laws which they were sworn to administer. "Magis valebant acumina ingeniorum, quam auctoritas legis." * In this way has their wisdom been employed on the side of mercy; and why should it not continue to be so employed, in pointing out to juries the gradations of a sentence by which the offender should not be punished excessively, the community not be endangered, and the letter, as well as the spirit of the law not violated? If a difference *re integra* is to be made by the legislature, let the representive of the Sovereign be exclusively entrusted with a privilege resembling the glorious prerogative of sovereignty itself. Let him be invested with the power of acting from the more amiable feelings of his nature, and protected from the chance of following the less. Let him have the right, not of fixing arbitrarily the severest punishments, but of selecting the mildest, when the dictates of his own enlightened mind suggest to him that he can be at once compassionate and just. He can do so now without controul. But he can also do the contrary with impunity, and whatsoever respect we have, and, I am sure, ought to have, for the knowledge and the humanity of the present generation, we can have no security for equal knowledge and equal humanity in their successors at some distant period. "Omnia mala exempla ex bonis initiis orta sunt; sed ubi imperium ad ignaros aut minus bonos pervenit, novum illud exemplum a dignis et idoneis ad indignos et non idoneos transfertur." † Experience has long shewn to us the danger of entrusting any great public interest to the prejudices and habits of single classes. When laws are to be enacted, we have the consent of Commons, Peers, and a King, whose different judgments, as affected by their different situations, are counteracted by each other, and who, after deliberation, are influenced by one common sense of duty, directed to one common object in the public good. When laws are to be administered, we have a jury to try the facts according to those laws, and we have a judge to explain in what extent, and upon

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* Bacon de Augm. Scient. quoted by Eden, chap. ii. of Principles of Penal Law.

† Sallust. Bell. Catalin.

what conditions the laws are applicable to those facts.* Time has evinced the safety of the practice, and therefore I was sorry to find that in a new statute, when the plea of usage could not be urged directly, the right of fixing the sentence † should be consigned to the judge, who unquestionably will understand the case, but refused to the jury, who with his assistance are equally capable of understanding it, and who have an equal interest with him, and all their other fellow-subjects in endeavouring to understand it well.

In the course of the debate on Sir Samuel Romilly's motion, it was proposed that persons convicted of private stealing should be subjected to hard labour or not at the will of the Crown.‡

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* "The court," says Judge Foster, "not the jury, is to judge the *malus animus*, which is to be collected from all circumstances," and bringeth the offence within the denomination of wilful murder, whatever might be the immediate motive to it. But this doctrine is not warranted by general practice, and, as Eden observes, "is inconsistent with Foster's statement that the mischievous intention is a matter of fact to be collected from circumstances. But if it be a matter of fact, not a matter of mere law, the jury, and not the court, are to collect it. Juries, by the advice of the judge may find special verdicts; but I have never met with any clear and express statement of a general principle that in trials of capital offences juries, if their consciences permit them, are not authorised to decide upon the point of law as well as the point of fact, and it is the peculiar province of the judge to enlighten the ignorance and to correct the mistakes of juries, if they make any, upon questions of law as applicable to the cause which they are trying."—See Eden, p. 228.

† Hale, who supposes that "the power and authority of the court and the judges would go a great way in the reformation of things amiss in the law, without troubling Parliament, afterwards adds, that in 'the remedies that are given by Parliament the law should be particular, and as little left *arbitrio judicis* as may be.'" —Cap. iv. of Hale on the Amendment of the Laws. If this precaution be expedient in the amendment of our civil code, where it is recommended by Hale, yet more important must it be in every reform of our penal code, and in every statute which is added to it previously to such reform.

‡ Such introduction of the Sovereign's name in Parliamentary debates ought not to pass unnoticed. The suggestion which I condemn, has fortunately not been admitted into the new statute. But it deserves to be remarked as a very unusual stride in legis-

But I suspect that such a proposal is not quite agreeable to the spirit of our constitution, or the usage of our laws. According to the constitution, the prerogative has been hitherto employed not in the ungracious office of aggravating, but in the more amiable task of mitigating punishment. The strength of that prerogative may be felt in its justice, but should be seen in its mercies rather than in its terrors. The King, according to the usage of our laws, may substitute transportation or imprisonment for death. But so jealous were our forefathers of placing too much in the hands even of the Sovereign, that if death be inflicted, he is not permitted in ordinary cases to alter the nature of that death, and is forbidden to mitigate or sharpen the pains of the sufferer by a discretionary power similar to that, which enables a judge to extend or to shorten the terms of imprisonment and transportation. The murderer must be dissected, or hung in chains—the traitor must be conveyed in a different manner from other malefactors to the place of execution, and must be embowelled* and

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lation, that the whole punishment of a crime formerly capital, should be at once deposited in the judge or court only; and that a discretionary power of extending the penalties to accomplices should be granted so largely. After repealing so much of the statute of the 8th of Elizabeth as takes away the benefit of clergy from persons stealing privily from the person of another, the statute contains the following clause for more effectually preventing the crime of larceny from the person:

"And be it further enacted, That from and after the passing of this act, every person who shall at any time or in any place whatever, feloniously steal, take, and carry away any money, goods, or chattels, from the person of any other, whether privily without his knowledge or not, but without such force or putting in fear as is sufficient to constitute the crime of robbery, or who shall be present, aiding, and abetting therein, shall be liable to be transported beyond the seas for life, or for such term not less than seven years as the judge or court before whom any such person shall be convicted shall adjudge, or shall be liable in case the said judge or court shall think fit to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not exceeding three years."

* I find two exceptions—Ashton in 1690, and Matthews the printer, in 1719, were hanged until they were dead, without any subsequent quartering or beheading. But the general practice is

quartered, though he be previously strangled. Even in the excepted cases of condemned noblemen, the King may remit a part of the punishment, but can make no addition to it; and the remaining part which is executed must always be included in the sentence, and therefore apparently proceeds, not from the arbitrary will of an individual, but from the impartial authority of the laws. Why then in the punishment of private stealing should the Sovereign be invested with new and extraordinary power, to be exercised, if it should so please him, on the side of severity? The introduction of the Sovereign's name appeared to me unnecessary and improper. All the ends of public justice would have been secured, if the statute had expressly doomed the offender to hard labour, and tacitly left it to the general prerogative of the Crown to permit or to mitigate this part of the punishment.

As my objection to the amendment of the new statute chiefly relates to the power which it bestows upon Judges, I am very solicitous to avert the imputation of disrespect to their office.

Now Dr. Paley, whose veneration for that office was not greater than my own, states some instances in which "more exact justice might be rendered to the suitors, if the determination were left entirely to the Judges, provided we could depend upon the same purity of conduct when the power of these magistrates was enlarged, which they have manifested in the exercise of a mixed and restrained authority." "But this," says he, "is an experiment too big with public danger to be hazarded." * Upon the same principle, too, I reason, when I disapprove of a law which gives to Judges the exclusive power of assigning the punishment for private stealing, and indeed for any offence which juries are appointed to try. But the opinions I hold of their responsibility to the public are mingled with sincere and profound reverence for their office. "He that has struck a ma-

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not to execute strictly that part of the sentence which directs traitors to be hanged by the neck, but *not till they be dead.* If the execution of any criminal so varies from the judgment, as to aggravate the punishment beyond the intention of the law, it would be murder in the sheriff.—See Eden, p. 208.

* Chap. viii.

gistrate," says an ancient writer, "τὴν τάξιν τῆς πολιτείας ἀνεῖλεν," "and deserves to be punished not with blows, but death."* The principle, I grant, extends from actions to all false and slanderous words uttered against those persons who "execute judgment," not "with violence, but according to truth." The force of that principle † is recognised, not only in the authoritative regulations of states but in the sober reflections of all mankind. Yet the application of this, as of every other moral rule, may be controlled by external circumstances. They to whom the happiness of man is entrusted, must, in some way or other, be answerable to the serious and unperverted judgment of man for the discharge of that trust. The prudential and decorous habits which we acquire in the civilized state, will often induce us to spare the individual for the sake of the office, though in foro conscientiæ the office may enhance the guilt of the individual. In the ordinary and quiet flow of worldly affairs we know from experience, that shame is a more efficacious remedy than those legal penalties from which it is sometimes invidious to seek redress, and sometimes difficult to obtain it. We know, farther, that Judges, like other moral agents, stand in need of allowances for mistakes and frailties, that the summum jus, if perpetually exercised against them, would be summa injuria, and that frequent impeachments would gradually break down that respect which answers many public as well as private purposes, and which not only protects the persons and characters of Judges from licentious insult, but gives additional weight to their most wise and equitable decisions. On the other hand, it were idle to talk of responsibility in those to whom the sacred task of administering the laws is committed, if gross partiality, if abject servi-

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* Vid. Andronic. Rhod. lib. v. cap. 6, and Aristotle's Ethics, lib. v. cap. 5.

† "Thou shalt not revile the Judges."—(Exod. cap. xxii. ver. 28.) Our English version gives Gods in the text, but Judges is placed in the margin. ALEIM is the word in the original. It occurs also in verses 8 and 9 of this chapter, and is there properly translated Judges. Great as was the licentiousness of speech among the Athenians, they were not permitted to speak sarcastically of the court of Areopagus.—(Vid. Petit. Leg. Att. lib. iii. title II. par. 26.)

lity, if the profligate exactions of a Dudley and an Empson, if the obdurate cruelty of a Jeffries, or the brutal ferocity of a Page, were exempt from every kind and every degree of reprehension. No honest Judge would wish for that exemption, and in a land of freemen and Christians a dishonest one would claim it in vain.

The natural sentiments of mankind may be collected from their uniform practice; and to those communes intelligentiæ, which are much surer criteria of right and wrong than the theories of philosophers or the decrees of potentates, what sentiment can be more congenial than that "the powers which are ordained by God" should be exercised steadily and solely for the benefit of God's creatures? Every subject has a deep and permanent interest in the measures of every sovereign; and if under every legitimate government he is accustomed in some form or other to express his disapprobation as well as approbation, surely he is entitled to speak with equal freedom about the representatives of the sovereign in that administration of justice, which stands among the most important functions of sovereignty itself. Circumspection, I allow, mingled with a spirit of candour and dutifulness unfeigned, becomes him alike as a good citizen, and a good man. Yet the ground of every legal and every moral obligation for him to be circumspect is the supreme usefulness of the judicial office, and the consequent necessity of protecting it from the misrepresentations of the turbulent, and even the suspicions of the virtuous. The dignity of that office itself is most firmly secured, and its best purposes are most effectually promoted, when they who are most interested in those purposes make just distinctions between the protector and the oppressor. Some occurrences which I can neither slight nor forget, furnish me with weighty reasons for pursuing this subject.

I have now and then met with persons, who, if the subject of responsibility in Judges was mentioned, would preserve a sort of systematic taciturnity, which betrayed at once their consciousness of the fact, and their unwillingness to have it discerned by the vigilant, or discussed by the inquisitive. They frowned, as if it did not exist, while they perhaps would have acted as if it did. They never ventured to deny the right of observation and censure, and yet were always on the watch to detect and condemn the

slightest error in the exercise of it. But their captiousness was at the expence of their consistency. For where is the propriety of throwing our courts open to subjects of every age, every sex, every condition, and every employment, if it were not meant that "hearing with their ears, and seeing with their eyes, and understanding with their hearts, they should be saved" from every kind of injustice? Where, let me ask, would be the public safety itself, if in cases in which decisions often supply precedents, and in which the community is always endangered by wrongs done to the individual, there is no controul from the public opinion? Where is the possibility of controul itself if opinion is to be stifled in sullen and dastardly silence? Where is the chance for opinion itself to be right, if men are always forbidden to investigate? Where is the mischief of even the strictest investigation, if Judges have been really just and impartial? Mistakes may be corrected as well as committed in the course of free and dispassionate enquiry; and in the absence of those narrow jealousies which pervade the concerns of private life, our minds are so formed that we readily become converts to truth, once interesting and agreeable to us, make a kind of common cause with the guardians of the public weal, and rally round them with increased attachment, when their conduct has been fairly and fully vindicated. But if resentments, originally excited by provocations, which the stretched out arm of power could not reach, were to be let loose with unrelenting fury upon other offences committed against other men, or covertly to aid in chastising the real libeller beyond his real demerit—if all the tricks of rhetorical exaggeration and technical sophistry were to be employed in extracting circuitously and invidiously the motives of our actions from doubtful phrases, and detached or mutilated passages—if warmth of temper were to be miscalled depravity of heart—if hasty censures were to be confounded with deliberate calumnies—if mistakes, unaccompanied by personal antipathy, or seditious intention, were to be tortured into crimes by the subtleties of lawyers, and punished as such by the authority of the laws—severity, in any of these supposed cases, would be unwarrantable, and eventually might aggravate the mischief which it was designed to avert. In contests between man and man, cunning may be defeated by cunning, and force may be repelled

by force. But oppression under the colour of justice is always more formidable from the arts which are used to disguise malignity. It exasperates the restless and disheartens the obedient. It leaves men of almost every condition helpless and hopeless. It accustoms them to look upon their best securities, as perverted into instruments for the worst purposes by those who can be, and who ought to be, the best protectors of their social interests and social rights. It compels them to exchange love for hatred, confidence for distrust, and submission for resistance. These considerations, dear Sir, though obvious enough to our common sense, may not always in our practice be regarded with sufficient seriousness, and the artificial, slavish, delusive maxims sometimes opposed to them cannot be watched too narrowly, or sifted too closely, or reprobated too sharply. On the other hand, it were scandalous, and it were perilous to lose sight of those simple but solid principles upon which our reverence for the ministers of the law becomes most reasonable and most salutary; and if regulations inconsistent with those principles should any where exist, we cannot be mistaken in supposing that the respectability of the government, and the welfare of the community will be promoted by their removal rather than their continuance.

Let me not be suspected of the smallest intention to lower the dignity of the Judicial office, or to undervalue the usefulness of those qualifications which study, experience, independence on the favour of the Crown, and a sense of responsibility to the opinions of a vigilant and enlighted people must tend to produce among our countrymen. I scorn to be the apologist of deliberate slander, either in the private or public concerns of human life. I contend for the strict observance not merely of truth, but decorum. Though an advocate for mere justice * to the dead, whose good or evil qualities may sometimes be developed in order to recommend or to counteract their example, I would mingle deference and tenderness with impartiality towards the living. I acknowledge the contempt I should otherwise feel

* The restrictions I state will prevent all violation of Chilo's well-known rule, "τὸν τεθνηκότα μὴ κακολογεῖν." Diog. Laert. lib. i. segm. 70.

to be converted into indignation, when flippant buffoonery or venomous sarcasm is employed to estrange the lower classes of mankind from the confidence they are wont to repose in useful men, and the reverence they ought to entertain for useful things. Far be it from me, therefore, to maintain that there are no seasons in which prosecutions may be instituted, even in opposition to the wishes of the calumniated party, and for reasons which deeply affect the interests of the community. But if such prosecutions were, as among ourselves they are not, very frequent, they would be injurious eventually to the salutary freedom of the press—if conducted with arrogance, or virulence, or ferocity, as by Crown lawyers they sometimes are, they would be deservedly odious—if followed up by measures of extreme rigour, they would in process of time call aloud for investigation and restraint from the wisdom of Parliament. There is, indeed, scarcely any species of power which a people jealous of their liberties, and anxious not to abuse them as a "cloke for maliciousness," ought to watch more attentively, because there is none which marches with such firm and silent steps of method, retires behind such strong ramparts of authority, or sallies forth with such formidable hosts of precedents. "Quod hodie exemplis tuemur, inter exempla erit." *

Presumptuous it were for me to censure any man, who knowing the importance of his office, and willing to discharge the duties of it well, should avail himself of the succour which the laws hold forth to slandered innocence and insulted dignity. But I may be permitted surely to bestow equal commendation upon the magnanimity of those distinguished statesmen, who in our own days have suffered scandal to spend its strength without using any other expedient to defeat it than calm and determined perseverance in not deserving it. In truth, dear Sir, I have often observed, and perhaps I have experimentally found, that innocence, which for the most part is finally supported by the moral sympathies of mankind, affords sufficient redress to individuals; and I have suspected that, upon the whole, greater evil than good arises to governments from promptness

* Tacit. Annal. lib. xi. par. 8.

of accusation,* however well founded, and frequency of punishments, however legal. In the triumphs of the strong † over the weak, a sudden impulse of self-preservation turns aside the minds of men from the merits of the cause to the inequality of the parties. There is always a lurking suspicion, that less of lenity or less of impartiality has been preserved than in disputes between equals. There is always a painful apprehension that the power which to-day protected right may to-morrow be wielded with equal alacrity and equal success in defence of wrong. Sometimes there is a confused and angry remembrance of a caution laid down by the son of Sirac, "Μὴ δικάζου μετὰ κριτοῦ· κατὰ γὰρ δόξαν αὐτοῦ κρινοῦσιν αὐτῷ." ‡ But lenity, which in private persons may sometimes be imputed to indolence, or to vanity, or to imbecillity of character, when found in governments is rarely appreciated below its intrinsic merit. In this land of freedom and civilization it would not be confounded with that licence which good-nature conspiring with policy induced Julius Cæsar to tolerate among a people "qui nec totam servitutem pati poterant, nec totam libertatem,"§ and which the regni novitas || did not permit his crafty successor to check suddenly and entirely. With the highest advantage to our rulers it might be compared with those capricious and cruel restraints which some later Roman Emperors imposed upon the speeches and the writings of their subjects, and which have been imitated, I fear, too often in certain nameless parts of Christendom. O, my friend! this celestial virtue brings with it blessings innumerable and inestimable. It soothes the unquiet, and charms the benevolent—it is welcomed as an appeal to the good sense and the gratitude of mankind rather than their fears—it calls

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* "Plerique mortales, etiam in impiis hominibus sceleris eorum obliti de pœna disserunt, si ea paullo severior fuerit."—(Vid. Sallust in Bell. Catalin.) Mischievous as might be the political views of Cæsar in his speech about the conspirators, his general observations are just.

† "In omni certamine, qui opulentior est, etiamsi accipit injuriam, tamen, quia plus potest, facere videtur."—Orat. Micips. in Sallust. de Bell. Jug.

‡ Chap. viii. ver. 14. § Tacit. Hist. lib. i. par. 4.

|| Virg. Æn. i.

forth our admiration, reverence, and affection—it binds our judgments and our hearts to the seat of justice, and the throne of majesty—it is ascribed to conscious integrity reposing on its own substantial worth, and conscious strength disdaining alike to seek and accept any foreign succour.

Happily, dear Sir, in this empire spectacles of judicial tyranny are very rare, and sooner or later its consequences would be discussed and its advocates would be condemned. The genius of the people and the spirit of their laws are, upon the whole, favourable to rational freedom of enquiry upon every topic of jurisprudence, legislation, politics, and religion. Peculiar and preeminent are the advantages which we enjoy, and if duly estimated they will be found to make it safe as well as honourable for the legislature to employ its wisdom in applying either gentle palliatives or vigorous remedies to any evil under which we may labour. Glad I am that in the course of my reflections upon a recent statute, I have been led to these general observations upon our old and sacred rights.

The mention of those rights suggests to my mind another subject well deserving the attention of those, who, while they would rectify the faults, ought not to overlook the excellencies of our judicial proceedings.

Upon the objects or ends of penal justice there is little difference in the statements of any writers: but they are expressed with peculiar precision by Mr. Bentham in the following words: "Example—prevention of similar offences on the part of individuals at large, viz. by the repulsive influence exercised on the minds of bystanders by the apprehension of similar suffering in case of similar delinquency."

"Reformation—prevention of similar offences on the part of the particular individual punished in each instance, viz. by curing him of the will to do the like in future."

"Incapacitation—prevention of similar offences on the part of the same individual by depriving him of the power to the like."

"Compensation or satisfaction—viz. to be afforded to the party specially injured when there is one."

To these Mr. Bentham adds "economy," which in his work on the principles of legislation is explained at large. "But of

all the foregoing ends, example," he observes, "is beyond comparison the most important. In the case of reformation and incapacitation for further mischief, the parties in question are no more than the comparatively small number of individuals who having actually offended, have moreover actually suffered for the offence. In the case of example the parties are as many individuals as are exposed to the temptation of offending; that is, taking the calendar of delinquency in the aggregate, the whole number of individuals of which the several political communities are composed—in other words, all mankind."*

I would add, that the end of example is in this country promoted indirectly by the publicity of our trials.

"Publicity is not less auspicious," says Bentham, "to the veracity of the witness than to the probity of the Judge. Without publicity all other checks are fruitless; in comparison of publicity all other checks are of small account. It is to publicity more than to every thing else put together, that the English system of procedure owes its being the least bad system as yet extant, instead of being the worst. It is for want of this essential principle more than any thing else that the well-meant labours of Frederick and Catharine in the field of justice have fallen so far short of the mark at which they aimed."†

This advantage, then, the inhabitants of England preeminently enjoy, and the value of it has been beautifully illustrated by two celebrated writers.

"A fourth requisite," says Paley, "in the constitution of a court of justice, and equivalent to many checks upon the discretion of Judges, is that his proceedings are carried on in public *apertis foribus;* not only before a promiscuous concourse of bystanders, but in the audience of the whole profession of the law. The opinion of the Bar concerning what passes will be impartial, and will guide that of the public. The most corrupt Judge will fear to indulge his dishonest wishes in the presence of such an assembly: he must encounter what few can support—the censure of his equals and companions, together

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* See A Letter to Lord Pelham.

† See Bentham's Observations on the Draught of a Code for the Organization of a Judicial Establishment in France, p. 26.

with the indignation and reproaches of his country."* Deeply struck with the importance of the subject, Mr. Bentham suddenly elevates his style to an equal strain of eloquence. "Publicity," says he, "is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the Judge himself while trying under trial. Under the auspices of publicity the causes in the court of law, and the appeal to the court of public opinion are going on at the same time. So many bystanders as an unrighteous Judge, or rather a Judge who would be otherwise unrighteous, beholds attending in his court, so many witnesses he sees of his unrighteousness, so many condemning judges, so many ready executioners, and so many industrious proclaimers of his sentence. It is through publicity alone that justice becomes the mother of security. By publicity the temple of justice is converted into a school of the first order, where the most important branches of morality are enforced by the most impressive means; into a theatre where the sports of the imagination give place to the more interesting exhibitions of real life."† If our penal code were reformed, would not the same circumstance of publicity accelerate and ensure the best effects of such reformation, and supply the deficiencies which Mr. Bentham imputes to the regulations of Catharine and Frederick? In our capital punishments publicity is strictly observed, and it perfectly answers two great purposes. It shows that death is inflicted upon the person who had been really condemned, and in the manner really prescribed by the laws. Yet from my observations upon the more immediate effects of public executions, I am convinced that some improvement in the mode of conducting them ought to be attempted. Curiosity is now gratified. Pity is excited. That Terror is not sufficiently impressed, seems to be owing to the frequency and sameness of the spectacle, to the want of solemnity in its forms, to the disgusting coarseness or shocking insensibility of the persons whose agency falls within the direct notice of the beholders, and to the absence of those vivid and lasting associations, which are likely to be produced by contiguity of place in the crime and the punishment.

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* Paley, chap. viii. † Draught of a New Plan, &c. p. 26.

I by no means adopt the splenetic rant of some unknown personage in an ancient comedy, by whom νόμοι are enumerated with "ἀγωνίαι, δόξαι, φιλοτιμίαι," among the "ἐπίθετα τῇ φύσει κακά." *

But if it be worth while for any state to lessen the number of its members by the destruction of criminals, consistent and sound economy seem to require that every expedient should be tried for making the example of their sufferings widely and permanently efficacious. No human blood need be shed to wound the sensibility of the spectators. No additional pain need be inflicted upon the offender. But alterations might be introduced with good effect in the choice of ceremonies and places for the execution of malefactors.

The new statute against private stealing, though encumbered with some doubtful amendments, will always be considered by me as supplying a most desirable alternative for the infliction of death.

"Hac me exempta juvat spinis de pluribus una." †

I rejoice too, that the generosity of the English character, however restrained by that decorum which ought to accompany the awful task of legislation, was conspicuous through the whole debate in the House of Commons. But I cannot dissemble the concern I felt at the resistance made to the motion of Sir S. Romilly by some gentlemen of the long robe, and without venturing to answer for the correctness of a newspaper representation, I shall set before you a striking passage which I read in the Evening Mail of June 17, 1808:

"To prove the prevalence of this species of confederated plunderers in other parts of the kingdom, as well as the metropolis, be stated that in the Spring Assizes at the Court Palatine of Chester, in 1806, there came before himself and the magistrate a kalendar of forty prisoners, amongst whom were seventeen boys, between the ages of twelve and sixteen tried, some for minor and some for capital offences, and it appeared that they were regularly trained to the business of robbery, going forth together in gangs, concerting their plans and setting projects of vigilance for each others security. Four of those boys were con-

* Vid. Menand. † Hor. Epist. ii. lib. 2.

victed, two of them capitally, and he was convinced that those who were acquitted owed their escape rather to the lenity of their prosecutors and the jury who tried them, than to their own innocence: the two boys capitally convicted suffered judgment, and the good effects were manifest in the prevention of similar confederacies ever since. From this circumstance he was persuaded, that if the present bill passed it would be considered by such criminals as a proclamation of impunity, and if he was induced to commute the capital punishment in such cases, it must be for some other little short of capital, such as transportation for life, which it would be for his Majesty to remit or mitigate as he should think fitting, according to the degree of the offence, for fourteen or seven years with or without hard labour."

Upon enquiring who the speaker might be, I was told that he is much connected with the very respectable Duke of Marlborough, that he has represented one or other of the Oxfordshire boroughs in several Parliaments, that he bears the reputation of being a sensible lawyer, and is now Chief Justice of Chester. When, therefore, he thought it incumbent upon himself to communicate the results of his own personal experience, and the motives of his own official conduct, before the members of a legislative assembly at the very moment when they were deliberating upon a question of life and death, he must have been aware that no remark, no statement, no argument brought forward by such a man upon such a question, could fail of engaging peculiar attention from his audience, and from the public. I would pay all the deference that is due to his station—I have no doubt of his sincerity—I commend his frankness—I give him credit for his readiness to transfer to the new statute the same fidelity and zeal which he manifested in administering the law lately abolished; and he in return will not be displeased with me for adverting to his speech. My hope indeed is that his name will never be forgotten. I trust that to the merit of his action in directing two very young persons to suffer judgment for private stealing, and to the validity of his reasons for thus inflicting a punishment confessedly severe, and confessedly rare, the most ample justice will be done by his contemporaries, and by their children's children. It must be his own wish as well as mine that the comparative humanity of the new law may be equally efficacious with the acknowledged rigour of the old. He

will think it his duty to distinguish between ringleaders and their accomplices—between those who immediately "steal from the person, and those who shall be present aiding and assisting therein"—between rash noviciates of fourteen or sixteen, and hardened adepts of thirty or forty.

Large are the allowances I would make for ardent language when the debate turns on subjects merely political; and the spirit of party under restrictions is by the common consent of mankind considered as venial. But in grave deliberations, the result of which is to affect the life or the personal liberty of man, I cannot look with indifference on rhetorical hyperboles, especially if they happen not to be uttered on the side of lenity, which in truth does not stand in need of them, and if they proceed from those respectable persons who are officially authorised according to their discretion to destroy or to spare a convicted malefactor. With surprise therefore, I read that the abolition of the greater punishment for private stealing would in the opinion of the speaker amount to a proclamation of impunity. To me, on the contrary, it appears that the new statute carries with it an authoritative and most alarming assurance, that the less punishment will be inflicted, though with increased or diminished rigour according to circumstances. It combines policy with justice—it substitutes frequency and certainty of punishment for excessive severity—it averts the evil which the experience of every day proves to be real, when, as Mr. Eden says, "the excess of the penalty flatters the imagination with the hopes of impunity, and thus becomes an advocate with the offender for the perpetrating of the offence."

By admitting the principle of circumstantial exaggeration, the statute is destitute of that precision which it must have had, if death had been pronounced. But delinquents must know that some punishment will be inflicted, and in order to remedy some of the inconveniences which may proceed from uncertainty in the degree of it, I have ventured to express my wish that the juries rather than the Judge, or, conjointly with him, should have been authorised to fix that degree. At all events, there is less danger when the human mind is left to calculate upon the greater or the less extent of the punishment now ordained, than upon the probability of escaping from the heavier punishment of death which the laws had before appointed, and to which the

compassion of the jury rarely permitted them to expose the accused. An offender who now hopes for mitigated punishment formerly reckoned upon the chance of complete acquittal. Hence cunning, rashness, and progressive obduracy were the effects usually produced upon the criminals by the unsteady administration of capital punishments.

A recent instance of this deplorable state of mind has fallen within my notice. A youth of twenty-two had deserted more than once—he betook himself to robbery. He anticipated death as the probable punishment of his thievery or his desertion. He neither cared, nor professed to care at what time or in what manner it might overtake him. He despaired. He plundered. He defied the wrath of man. He frowned at the mention of God. "He laughed at a violent death as the affair of a moment." * And without shewing the smallest sign of shame, or compunction, or terror, he underwent the sentence of the law.

Public executions are intended, I suppose, as was said of Tragedy, "δι' ἐλέου καὶ φόβου περαίνειν τὴν τῶν ἀνθρωπίνων παθημάτων κάθαρσιν." † But that the execution of an offender in a narrow lane and amidst a few spectators, should operate as an example, exceeds, I must confess, my powers of belief, and even comprehension, "οὐ φοβερὸν, οὐδὲ ἐλεεινὸν τοῦτο ἀλλὰ μιαρόν ἐστιν." ‡ A general rule, I grant, must not be suspended on account of every particular case. But is it unworthy of our wisdom or our humanity to calculate the general effects of the general rule itself? The wretch of whom I am speaking no longer annoys society. But no attempts prescribed by the laws were made to render him useful to it. He was cut off from existence at a time when from his youth and his strength he might have been compelled to be useful. He was hurried into eternity for which he was little prepared; and are these light considerations? He must be something more, or something less than a man, who would dare to call them so.

"The pains of death," says Blackstone, "and perpetual disability by exile, slavery, or imprisonment ought never to be inflicted, but when the offender appears incorrigible, which may

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* Beccaria, cap. xxviii.
† Aristotle, Poet. cap. vi.
‡ Aristot. Poet. cap. xiii.

be collected either from a repetition of minute offences, or from the perpetration of some one crime of deep malignity which of itself demonstrates a disposition without hope or probability of amendment." I do not assent to the principle that the incorrigibleness of the offender is a necessary condition for the infliction of death. Men not radically and habitually vicious are precipitated by sudden temptations into heinous crimes by which the public safety is endangered, and for which alone they may deserve to die. Blackstone was too sagacious to talk of capital punishment as "meant for the amendment of the criminal, because this end is absolutely defeated when we put him out of the world." * He would not, I suppose, have maintained that "human judgment can determine whether it be for the benefit of a delinquent deemed incorrigible to be excluded from society or to remain in it." "Possible it is at least that the delinquent whom we suppose irreclaimable, might, if indulged with life, forsake the habitude of evil; and we assume greater sagacity than belongs to our finite comprehension, whether it is better for a criminal with respect to himself alone, to die or live." †

The criteria, then, which Blackstone lays down are to me quite unsatisfactory. Who by any general rule can adjust the precise number of smaller offences which make a man irreclaimable? Who that recollects the quick and strong impulses under which great crimes are sometimes perpetrated, will maintain that in the future absence of similar temptation the offender may not be more than a harmless member of society, and that, stung by remorse for his past misconduct, he will not endeavour to expiate it by amendment of life? Who has thrown open to the eye of man the whole chain of those events, which in the moral order of things may gradually or instantaneously work together for the good of the vilest transgressor? Who does not know that in the common course of worldly affairs the pains of sickness or the shocks of calamity have wrought the most powerful effects upon persons who in appearance were quite callous? Who can calculate the influence which solitude, hard labour, and occasional encouragement mixed with occasional restraint may have upon the stoutest spirit? Who has not been told of criminals who after

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* See Dagge, vol. i. p. 215. † Ibid.

arriving, as we think, at the most excessive pitch of profligacy have yet reformed? Who has not seen instances in which the rigour of the laws has driven them to despair?

To capital punishments beyond all others the rule of Tully is applicable: "Ut pœna ad paucos, metus ad omnes perveniat."* In regard to other men, spectacles of death may have their use, not only by shewing the danger of an enormous crime, but by restraining men from those lighter offences which may lead to the commission of it. In regard to the sufferer the prospect of that death, not the infliction of it, might be intended for his benefit. Dr. Paley, who looks for little effect from punishment in the way of amendment, and who seems to think that malefactors return more hardened in their crimes and more instructed from imprisonment and exile, pain and infamy, yet supposes that "the horrors of impending death may cause such a wrench in the mental organs of a confirmed villain as to give them a holding turn:" he even thinks "it probable that many of those who are executed would, if they were delivered at the point of death, retain such a remembrance of their sensations as might preserve them, unless urged by extreme want, from relapsing into their former crimes. This however is an experiment that from its nature cannot be repeated often."† But what I ask is to preserve them from such want in a country which has not only neglected hitherto to secure a maintenance for those criminals who are even willing to work for it, but in which "public punishment," according to Dr. Paley's own confession, "precludes them from all manner of honest support." If an unhappy wretch who had been reprieved under the gallows were afterwards detected in the commission of a capital crime, little attention would be paid by the generality of the world to the peculiar circumstances of the temptation to it, and he would be pronounced incorrigible. But the judgment we thus confidently pass upon him might be erroneous and unrighteous. Though pierced with the sharpest taunts of an earthly judge, and though insulted in his passage to death by the execrations of those "who deck themselves in purple and fine linen, and who fare sumptuously every day," the sufferer may carry with him such a plea as wil

* Pro Cluentio. † Chap. ix.

not be rejected by that Being "to whom all hearts are open," and all causes are known. "I had no means, nor incitements," he might say, "to gain a little reputation, because a stamp of ignominy had been indelibly fixed upon me, before I was thrown back upon an injured and incensed world. I fled from solitude and reflection, because the past afforded me no satisfaction, the present sustained my sinking spirits by no consolation, and the future cheered me with no hope. I associated with wicked companions, because good men shunned me. I wandered, because I had no home. I loitered, because no man would employ me. I stole, because the importunate and irresistible cravings of nature would not permit me to starve. A suspected vagrant in every lonely village, a detested outcast in every crowded city, cold and naked, hungry and thirsty, I no longer can desire to live, nor fear to die." These excuses, so generally disbelieved and rejected by man may be true, and if true, they are important, and if important, they may plead "trumpet-tongued" against the revilers of the unfortunate, when they meet together before the tribunal of Heaven.

Policy is never at a loss to find materials of justification in an inexhaustible storehouse, which I could never explore without distrust and loathing. But when the life of a fellow-creature may depend upon the opinion we form of his utter incorrigibleness, the decrees of nature and the oracles of religion pronounce the same warning—"*μὴ κρίνετε τὰ κατὰ πρόσωπον βλέποντες ἵνα μὴ κριθῆτε.*"

"Those who have been witnesses to the solemn manner in which executions are conducted in some parts of Europe, speak of the impression arising from that circumstance as wonderfully strong. Dr. Moore describes such an execution which he was present at in Rome, and mentions in strong language how deeply the populace were affected by it." * Mr. Howard remarked the same thing in Holland: and accounting for the few executions which take place in the United Provinces says, "one reason of this, I believe, is the awful solemnity of executions, which are performed in the presence of the magistrates, with great order and seriousness, and great effect upon the spectators."†

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* See Letter 44, vol. iv. † Prisons, p. 45.

"Whoever will contrast this with the manner in which executions have been heretofore conducted among us, will readily perceive that though we exhibit this terrible spectacle, we do not derive from it all the benefits it was designed to produce." *

The foregoing observations are applicable to executions in our own country. As to Rome, murders are said even now to be common there: but the police is very imperfect, and the solemnity of executions is counteracted by their frequency. "In Denmark," says the writer of an Inquiry into the Effects of public Punishments upon Criminals and Society, "uncommon pains are taken to prepare criminals for death, by the conversation and instructions of the clergy. After this they are conducted to the place of execution with uncommon pomp and solemnity. The criminals under these circumstances suffer death with meekness —piety—and sometimes with dignity. The effects of this, I have been well informed, have been in several instances to induce deluded people to feign or confess crimes which they had never committed, on purpose to secure to themselves a conspicuous death and a certain entrance into future happiness. There is something in the presence of a number of spectators which is calculated to excite and strengthen fortitude in a sufferer. 'It is not so difficult a thing (said Louis XIV. to his courtiers who stood around his death-bed) to die, as I expected.' 'No wonder,' says Voltaire, who relates this anecdote, 'for all men die with fortitude who die in company.'" † The foregoing statements are important, and the inference I should draw from them is, not that public executions should be abolished, but that they should be accompanied with such solemnities as may subdue the fortitude of a criminal suffering before multitudes, or counteract the effects of that fortitude if it be unsubdued, upon the minds of the spectators—such as may convert their admiration of his courage into horror at his obduracy. There is little reason to fear that Englishmen will often be seized with the fanaticism which is said to precipitate the Danes into the perpetration or confession of crimes which lead to death, and of which I have read a striking instance—

"Non abs re forsitan fuerit, nec Lectori injucundum, referre

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* Bradford, pp. 68, 69. † Page 5.

hic facinus novum, nec admodum credibile, nisi testium multorum, ex quibus rem audivimus, fide niteretur, nec longo ante adventum nostrum tempore in his locis paratum. Vir Succus, mente sanus, probus, bene moratus, inter populares satis commodus, media luce quadrimulum puerum, ante fores paternæ domus, palam in vico inter æquales colludentem corripit, cultroque in fauces adacto interemit. Comprehensus ille, et in judicium adductus, nec factum negavit, nec excusavit, nec facti pœnam deprecatus est. Imo vero, inquit, me commeritum esse mortem scio, eamque ut a vobis impetrarem hac arte usus sum, cum probe norim vix tutiorem esse ullam salutis æternæ adipiscendæ viam, quam cum sensibus integris, corpore valido nec morbis debilitato, excedit anima, piis ad Deum religiosorum hominum sublevata precibus, eorumque consiliis et adhortationibus excitata et adjuta. Quod mortis genus ut per vos oppeterem cum fieri non posse intelligerem, nisi aliquo delicto capitali admisso, levissimum id esse judicavi quod a me perpetratum est, occiso puero nondum vitæ hujus corruptela infecto, parentibusque egenis, et numerosa prole onustis erepto. Quibus dictis capite damnatus, lætus ac renidens, sacrosque hymnos pleno ore decantans, supplicio affectus est." *

I shall not enter into a detail of the dangers which might arise from private executions, or into a description of the dreadful abuses which an oppressive government might make of such a custom. The most obvious consideratiou is, that punishment would very much lose the force of example.

The merits of the whole question upon capital punishments are well summed up by Mr. Bradford in the following words: "If we seek a punishment capable of impressing a strong and lasting terror, we shall find it in an execution rarely occurring, solemnly conducted, and inflicted in a case where the feelings of mankind acquiesce in its justice, and do not revolt at its severity." †

I plead not for the light treatment of any iniquity which deserves "to be punished by the Judge." ‡ The intended pream-

* See the Commentary of Huetius de rebus ad se pertinentibus, Amsterdam, 1718.

† Page 36. ‡ See Job, chap. xxxi.

ble to the new law against private stealing, though incontrovertible in point of fact, though admissible as a principle in general reasonings on jurisprudence, and though worthy as such of the most earnest attention from every legislator, may be unfit to stand in the front of Sir Samuel Romilly's statute. At the same time it is conceivable that the dissolution of a confederacy formed in a country town by boys who are between twelve and sixteen years old, may be purchased at a price which humanity and policy would be unwilling to pay—it is credible that the immediate transportation of the four who were convicted at Chester, and the unmitigated punishment of those who owed their escape to the lenity of prosecutors and juries might have been nearly as terrific to common minds, as the death of two — it is allowed that the acquittal of thirteen did not counteract the effects of ex-example in the dreadful fate of the striplings who perished, and to me it is most improbable that a statute which exposes offenders to the solitude of a prison, and the hardships of Botany Bay, for the whole remainder of their existence, should be considered as "a proclamation of impunity" by any blockhead however stupid, or any thief however obdurate. The expectation of such a punishment may be more terrible than even the "prospect of death to men who are tired of life in the manner they hold it, who commit crimes to better their condition or put an end to their being, who make their advances to the wickedness they intend to perpetrate with a view of this alternative before their eyes, and upon whom the terror of death hath not sufficient influence to deter them from their desperate resolution." *

"However political casuists," says Dagge,† "may pride themselves in subtilizing and reconciling moral repugnancies with public necessity; we may venture to conclude that whatever shocks the common sense and feeling of mankind is faulty in its original establishment." That the old statute inflicting death was thus faulty seems to have been the opinion of those who tried the criminals at Chester—they were aware that gangs existed in the neighbourhood—they knew that the danger was increased by the frequency of the offence—they may be supposed

* See Dagge's Considerations on Criminal Law, sec. ii. cap. 6.
† Ibid. cap. 5.

to have been under some temptation to administer laws, as, alas! they are too often enacted, flagrante ira.* But that under such circumstances they were induced to shew so much lenity to so many offenders proves the truth and importance of an observation made by a Christian moralist and a profound philosopher, whose name was not mentioned during the late discussion of this question in Parliament. "Whatever may be urged," says Dr. Johnson, "by casuists or politicians, the greater part of mankind, as they can never think that to pick the pocket and to pierce the heart is equally criminal, will scarcely believe that two malefactors so different in guilt can be justly doomed to the same punishment: nor is the necessity of submitting the conscience to human laws so plainly evinced, so clearly stated, or so generally allowed, but that the pious, the tender, and the just, will always scruple to concur with the community in an act which their private judgment cannot approve."† When punishments shall be inflicted with the lenity for which Beccaria contends, then, but not till then, would he, or any wise legislator, plead for their certainty. Then too, and then only, would a good man applaud himself for discharging the duties of a good citizen, in compliance with Beccaria's‡ well-known principle: "Voluntary forgiveness of a small crime by the party injured may be an act of good-nature and humanity, but it is contrary to the good of the public. For although a private citizen may dispense with satisfaction for his private injury, he cannot remove the necessity of public example. The right of punishing belongs not to any individual in particular, but to the society in general, or the sovereign who represents that society; and a man may renounce his own portion of that right, but he cannot give up that of others." Three times, let me confess, I have myself suffered the most painful struggles between the sense of private and of public duties; and three times, dreading the severity of our law, I have yielded to my humanity conspiring with my reason, when they forbad me, without real necessity, to shed the blood even of the unrighteous. One of the offenders, after leaving my family, ventured upon other crimes in other places—

* Dagge, sect. ii. cap. 6.
† Rambler, No. 114. ‡ Cap. 47.

a second by my suggestion entered into the army. I have not been able to trace the conduct or the fate of the third. But under a deep conviction of my responsibility to the tribunal of Heaven, I shall ever look back with approbation to my own forbearance.

Among the opponents of Sir Samuel Romilly, one gentleman introduced the venerable name of Dr. Paley, and bestowed upon the Doctor's writings the most ardent and just commendation. It were rude to suppose that a senator would refer to a book which he had not read, or that knowingly he would insist upon one part, but stifle another. But it so happens that the zeal of the person to whom I allude seems rather to have weakened the power of his memory. Dr. Paley does say that "great cities* multiply crimes, by presenting easier opportunities and more incentives to libertinism, which in low life is commonly the introductory stage to other enormities, by collecting thieves and robbers in the same neighbourhood, which enables them to form communications and confederacies that increase their art and courage, as well as strength and wickedness, but principally by the refuge they afford to villainy in the means of concealment, and of subsisting in secrecy, which crowded towns supply to men of every description. These temptations and facilities can only be counteracted by adding to the number of capital punishments." I do not distinctly understand whether Dr. Paley means that new statutes should be made, or that those now in being should be executed with greater severity, to counteract the temptations of which he speaks. I might perhaps with some restrictions assent to the latter. But I should hope that the steady infliction of the punishments already provided, or the appointment of others yet more severe, but short of death, would

* The best corrective I have seen to the dangers which hang over the public morals from large towns, is to be found in the principle of the penitentiary system recommended by Mr. Bentham:

"The scene of punishment would be the vicinity of the metropolis; the very spot which contains the greatest number of spectators of all descriptions, and in particular of those in whose instance there is the strongest reason for wishing that the impression may be made."—See page 4 of the first Letter to Lord Pelham.

answer the purpose. Be this as it may, Dr. Paley most certainly affords no aid to the cause of the persons who resisted Sir Samuel Romilly. "It is enough," says Dr. Paley, "to vindicate the lenity of the laws, that some instances are to be found in each class of capital crimes which require the restraint of capital punishment, and that this restraint could not be applied without subjecting the whole class to the same condemnation." But let us observe what follows: "There is, however, one species of crimes, the making of which capital can hardly, I think, be defended, even upon the comprehensive principle just now stated; I mean that of privately stealing from the person. As every degree of force is excluded by the description of the crime, it will be difficult to assign an example where either the amount or the circumstances of the theft place it upon a level with those dangerous attempts to which the punishment of death should be confined. It will be still more difficult to shew that, without gross and culpable negligence on the part of the sufferer, such examples are probable, or were ever so frequent as to make it necessary to constitute a class of capital offences of very wide and large extent."

The introduction of Dr. Paley's most respected name upon a subject on which he does not differ from Sir Samuel Romilly reminds me of the anguish I suffered on reading in another part of his celebrated work some observations to which it is impossible for me to give my assent. The question is so important, that for the present I shall suspend my remarks upon the statute against private stealing; and beg your attention to my reasons for not agreeing with Dr. Paley on another point.

"Vulgatum illud, quia verum erat, in proverbium venit."* "It is better that ten guilty persons should escape, than that one innocent man should suffer." This maxim is recognized by the learned Commentator on the Laws of England, when he says, "All presumptive evidence of felony should be admitted cautiously, for the law holds that 'it is better for ten guilty persons to escape than for one innocent man to suffer.'"† It may be illustrated mutatis mutandis by the humane language of Julian, when he vindicates the relief which he had been accus-

* Livy, lib. xl. par. 46. † Book iv. cap. 27.

tomed to afford to the unhappy violators of the laws: "*οὐδὲν γὰρ κωλύσει τὴν δίκην ἡ τοιαύτη φιλάνθρωπία· χαλεπὸν γὰρ ἂν εἴη, πολλῶν ἀποκεκλεισμένων ἐπὶ κρίσει, καὶ τῶν μὲν ὀφλησόντων, τῶν δὲ ἀθώων ἀποφανθησομένων, μὴ διὰ τοὺς ἀναιτίους οἰκτόν τινα νέμειν ἐν τοῖς πονηροῖς· ἀλλὰ τῶν πονηρῶν ἕνεκα καὶ περὶ τοὺς οὐδὲν ἠδικηκότας ἀνηλέως, καὶ ἀπανθρώπως διαδεκεῖσθαι.*" *

Now Dr. Paley thus controverts this position: "If by saying that it is better, be meant that it is more for the public advantage, the proposition, I think, cannot be maintained. The security of civil life, which is essential to the value and the enjoyment of every blessing it contains, and the interruption of which is followed by universal misery and confusion, is protected chiefly by the dread of punishment. The misfortune of an individual, for such may the sufferings or even the death of an innocent person be called, when they are occasioned by no evil intention, cannot be placed in competition with this object. I do not contend that the life or safety of the meanest subject ought in any case to be knowingly sacrificed. No principle of judicature, no end of punishment, can ever require that. But when certain rules of adjudication must be pursued, when certain degrees of credibility must be accepted in order to reach the crimes with which the public are infested; courts of justice should not be deterred from the application of these rules by every suspicion of danger, or by the mere possibility of confounding the innocent with the guilty. They ought rather to reflect that he who falls by a mistaken sentence may be considered as falling for his country; whilst he suffers under the operation of these rules, by the general effect and tendency of which the welfare of the community is maintained and upheld." †

When I reflect upon the severity of our penal code, upon the number of our penal statutes, upon the actual and almost unavoidable ignorance of many offenders as to the danger to which they are exposed from the extension or multiplication of those statutes, upon the rashness, weakness, cunning, and malignity of witnesses, and upon the force of local or personal prejudices, from which jurymen are not always free, I am compelled to

* Juliani Fragment. p. 533. † Cap. 9.

urge Cassianum illud—Cui bono is so much resistance made to a maxim, the practical tendency of which is to render men cautious in shedding the blood of their fellow-creatures. They who are governed by that maxim, will readily admit that "certain rules of adjudication must be pursued, and certain degrees of credibility must be accepted, in order to reach the crimes with which the public are infested." They do not mean, that "courts of justice should be deterred from the application of those rules by every suspicion of danger, or by the mere possibility of confounding the innocent with the guilty." But they do mean, that under certain circumstances there may be such a suspicion of danger, such a remote probability of confounding the innocent with the guilty, that for the community it is better, by a lenient application of judicial rules, to let ten guilty persons escape, than to make one innocent man suffer by the rigorous application of them. They think the security of civil life less interrupted by the aggregate consequences of sparing ten men who have violated the law, than by the aggregate consequences of saving one innocent man who is in imminent danger of destruction, though he has not violated it. They contrast the public welfare itself under one aspect, with the public welfare under another aspect. They oppose, not merely the sufferings of that innocent person himself, but the conscious security of other innocent men to the advantages which society derives from the punishment of ten or more guilty men. In the absence of direct intention to destroy an innocent man, they would, upon the discovery of his innocence, condemn themselves for want of caution, and want of lenity, if they had not given the fullest force to every circumstance which made his guilt in any degree doubtful. And for giving such weight to such circumstances from motives of lenity and caution, they would not condemn themselves, though under similar circumstances, and from similar motives, they should be induced to acquit ten persons whose guilt afterwards became manifest. The nature of those circumstances, and the appearance they would assume to an attentive and honest juryman, must depend upon the case itself. But the general preparation of the mind to discern and to weigh them is, I think, a most important qualification for every man who may be called upon to pronounce a verdict of death. The

controverted maxim may be vindicated as tending to facilitate that preparation.

If, indeed, the punishment were less than death, there would be less necessity for caution. But when it amounts to death, the caution cannot be too great; and when the greatest caution fails, would our conscience entirely acquit us, merely because we had at the same time been sincere and earnest in our endeavours to rescue society from ten real transgressors of the laws? Should we not feel at least some temporary distrust in those rules of adjudication, which, as applied by ourselves even without any evil intention, had bereaved the community of an innocent man? Some restless suspicion that we had attended too much to unfavourable, and too little to favourable circumstances? Some secret anticipation that, if placed in the same situation again, we should not again give the same verdict of guilty? Should we not shrink when we approached the unsuccessful assertors of his innocence? When we beheld the tears of his parents and his friends, and heard the unavailing moan of a widow and her orphans weeping over their lifeless protector? Though Dr. Paley is content to call the death of such an innocent person by the mild name of a misfortune, surely, upon the discovery of his innocence, we must admit that a wrong had been done to him. Though by a circuitous process of reasoning we might consider him as "falling for his country," we should remember that, among the clearest descriptions of punishment, it is uniformly represented as an evil which "a delinquent incurs unwillingly," and therefore our grief would not be assuaged by the admiration we feel when the sufferings of a political or religious martyr are voluntary, and therefore meritorious. Though we "allow the security of civil life to be essential to the value and the enjoyment of every blessing it contains," we should not be so panic-struck as to look for universal misery and confusion as the consequence of a single or even numerous interruptions. Though we might acknowledge that the escape of ten guilty men has some tendency to interrupt the security of society, yet we should not venture to deny that the punishment of one innocent man is itself also an interruption of that security, and if compelled to balance one inconvenience with another, the soberest enquirer would meet with many galling difficulties

in proceeding to a final determination. He would experience more reluctance and more diffidence than usually accompany the results of moral calculations. He would find it scarcely possible so to conduct the processes of severe reason as not to be checked again and again by misgivings from humanity. He might slowly assent to elaborate arguments, and yet shudder at the prospect of being personally employed in carrying them into action. When acquiescing in the general rule, he might be disposed to reserve the right of founding exceptions upon the kinds and the effects of particular crimes, and upon particular circumstances which attend the commission of them. He might say, for instance, that it is better for ten men guilty of murder to suffer, than for one man falsely accused of robbery to escape; and better for ten men who are guilty of robbery to escape, than for one man falsely accused of murder to perish. I cannot certainly disapprove of distinctions which tend to mitigate the rigour of the general principle. But I think the principle itself so dangerous to society, and so shocking to the best feelings of the heart, that I cannot accede to it under any qualifications whatsoever.

"Courts of Judicature," says Dr. Paley, "ought rather to reflect that he who falls by a mistaken sentence may be considered as falling for his country; whilst he suffers under the operation of these rules, by the general effect and tendency of which the welfare of the community is maintained and upheld!"

I do not imagine that the considerations which Dr. Paley here recommends to judges were in the smallest degree necessary to preserve their firmness in the administration of the laws; and I hold that beyond all other men they are bound to view such considerations with distrust, and even to advert to them with reluctance. Their skill in the laws, their experience in trials, their opportunities for observing the depravity of offenders and the effects of crimes, their consciousness of the high importance belonging to their office, and the known watchfulness of the public over themselves in discharging the duties of it, are, it should seem, sufficient securities for the steadiness of their attention and the uprightness of their instructions. Even in juries, a general detestation of wickedness, a general dread of the mischiefs which crimes produce in society, a general regard to the safety of their own property and their own lives, a general con-

viction of the usefulness and respect for the sanctity of the laws, an immediate sense of the obligation which lies upon them to attend to the suggestions of enlightened and experienced judges, whom they are accustomed to venerate, and an awful remembrance of their responsibility to their country, when they are sworn to protect it against the disturbers of the public peace—these, I think, will in most cases supply motives strong enough to put them on their guard against excessive compassion—against deliberate negligence—against gross partiality.

The arguments suggested by Dr. Paley may, I think, be adduced with more propriety in consoling the sufferer than in vindicating his judges, and doubtless such a sufferer ought to be supplied with every reason which sound morality can furnish for the mitigation of his sorrows. But, as human nature is usually constituted, what, I would ask, is likely to be the effect of such arguments on his mind? If he be a man of feeble intellect, or confined education, can it be imagined that the immediate and exquisite sense of the wrong done to him will be soothed by the consideration that "certain rules of adjudication must be pursued, and certain degrees of credibility must be accepted, in order to reach criminals"—that all human institutions are imperfect—that judges and juries are not infallible—that partial evil is inseparable from public good—and that this good is effected for the benefit of many other men by the very same laws under which he is himself suffering undeservedly the sharpest evils? Men of deep reflection and very stout courage may, in a few instances, so reason. Socrates* did reason so, and by the singularity as well as the manliness of his conduct, has commanded the admiration of all succeeding ages. Examples yet more sacred might be urged with effect at a season when, upon the approach of death, the human heart is most susceptible of religious impressions. To a very enlightened man, who thought himself unjustly condemned, I had myself occasion to state the principle laid down by Dr. Paley, and to enforce it by the examples just now mentioned; and I pressed them with so much earnestness as to prevent an act of suicide, which my unhappy friend had determined to perpetrate on the morning of his exe-

* See the Crito of Plato.

cution. "Memoriam quoque ipsam cum voce perdidissemus, si tam oblivisci in nostra potestate esset, quam tacere."* That silence I have hitherto preserved upon an event most afflictive to my soul, and I have now found a proper opportunity for breaking it.

Whatsoever may be, and whatsoever ought to be, the efficacy of Dr. Paley's reasoning to produce resignation in the breast of an innocent sufferer, most unbecoming and most perilous it were for legislators and judges to make it a subject of habitual reflection to themselves. The frequent recollection of it tends not only to diminish their sensibility, but to relax their caution. It may teach them to forget, that the misfortune incurred by the individual, and, as I shall always add, the wrong done to him, may have other consequences than the destruction of his life. The discovery of his innocence may lessen the respect of mankind for those laws which are intended to be "a terror only for evil works," and must disturb the confidence which every man reposes in his own innocence. Every man is exposed to rashness or malignity in false accusers—to erroneous or malicious inferences from his general conduct — to prejudices† against his temper, his manners, his employments, his religion, his party, or his family. Every man may from unseen and uncontrolable events be thrown into circumstances which furnish strong presumptions of guilt. Almost every man has suffered unmerited reproach upon grounds not less probable than those which in a court of judicature might affect his life. It is therefore dangerous to familiarize the belief of Dr. Paley's argument to witnesses, or juries, or judges; and the portion of truth which it may contain is a very inadequate compensation for the shock it would give to the general feelings and judgment of mankind. Most fallacious, also, is it to contend, that the question lies between the individual only and the community. Every other innocent

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* Vide Tacit. in Vita Agric.

† "Plerumque innocentes recenti invidiæ impares."—Tacit. Annals, iv. par. 18. edit. Lips.) The history of every country would, I suppoee, supply numerous instances of persons, "Quibus, in causæ dictione, magis quæ extra quæstionem erant, nocuerunt, quam innocentia sua opem tulit."—Valer. Max. lib. viii. cap. 1.

man, as I have before remarked, is interested in the acquittal of one innocent party; and by the destruction of one innocent party every member of the community is molested in that sense of personal security which is classed among the choicest blessings of society, and among the noblest ends which the laws themselves are intended to promote.

"Erit intactis quoque cura
Conditione super communi." *

From defects in the evidence, quirks in law, reluctance in prosecutors, or misplaced tenderness in juries, offenders are sometimes acquitted; and though it be known that they are likely to return to their vicious courses, the public mind is rarely much incensed, or much alarmed at their escape. In cases of common robbery, the magnitude of the punishment is compared with the seeming lightness of the offence, and we are content to absolve offenders, not lest they should suffer at all, but lest they should suffer too much. In cases of murder, the certainty and just severity of the punishment are compared with the imperfections of the evidence, and we are slow to condemn. But shall it be said that we are therefore careless about the authority of the laws which protect our liberties and our lives, and that we allow every suspicion of danger to prevail over every rule of adjudication and against every degree of credibility? If our caution in convicting men whose guilt was not wholly improbable is approved by the general sentiment of those who have the deepest interest in restraining their crimes, who shall set bounds to our indignation when the want of such caution has exposed an innocent man to a most painful and ignominious punishment?

Who that is anxious to obtain redress for the evils which arise from the acquittal of guilty men would not seek it, if it were possible, in other rules of adjudication and in other degrees of credibility, rather than in those which may involve the innocent with the guilty? If such redress by such means be unattainable, let us deplore the imperfections of human justice—but let us beware of discouraging that caution and that tenderness which seem to me most salutary in preventing men from being even unknowingly the destroyers of the innocent.

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* Vid. Horat. Ep. I. lib. ii.

It is not easy to restrain the eagerness of ingenious men to improve upon supposed discoveries, or to control their fondness for apparent consistency in the application of a favourite rule to circumstances which did not present themselves to the mind, when the grounds of that rule were originally approved. They profess, perhaps, in the heat of controversy no more than they at the moment believe—but they will stoutly vindicate far more than they would deliberately practise, and their arguments, laying hold on the vanity or credulity of weaker men, may have a more powerful influence than their example. Zeno held a very high rank among the "doctores Sapientiæ, qui nulla bona nisi quæ honesta, nec mala nisi quæ turpia judicabant." * Yet of Zeno we read, that when urged by some alarming consequences of his own hypothesis, he avowedly maintained the harmlessness of some crimes most shocking to our nature."† Persons amongst ourselves might be found, who, sacrificing their benevolence to their acuteness, would theoretically push Dr. Paley's principle to an extent to which it is not expressly carried by himself. They might say that the comparison lies, not between one innocent man and ten or fewer guilty men, but between any number of innocent men who suffer death, unknowingly to those who try them, and that number of guilty men whose merited punishment on the whole produces more good to the community than the unmerited punishment of the others produces evil. They might contend that the same rules of adjudication which may have caused even ten times ten innocent men to be put to death, form a part of those laws "which by their general effect and tendency uphold the welfare of the community," and that upon many occasions they had "reached the crimes with which the public are infested." He that is embarrassed or affrighted with such a conclusion would do well to investigate the premises on which it is founded, and to take care lest his caution in particular cases should be lulled asleep by considerations of public utility, which in my opinion have been applied to one side of the question only.

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* Tacit. Hist. lib. iv. par. 4.

† Vid. Sext. Empir. Comment. lib. x. et hypotypos, lib. i. de octavo modo, et lib. iii. cap. 24. v. 25.

In opposition to Dr. Paley's general position then, that the popular maxim cannot be maintained, I shall always respectfully, but firmly assert, that for every practical purpose it can.

The rarity of the case may make us inattentive to the unsoundness of the reasoning, and forgetful that the very same circumstance of rarity proves not only the general efficacy and general equity of those laws which uphold the general welfare of the community, but the absence of any real necessity to secure that efficacy, by controverting a maxim, which in point of fact is seldom or never abused. Upon a subject so momentous I will not employ the Sorites of logicians, nor "demens unum item et unum" * will I enquire, whether it be on the whole better for one innocent man to suffer, or ten, or five, or two guilty men to escape? The heart of man shrinks at first from grave calculation. But if the appeal were made to experience, the question might be decided on the very same principle of proportion which Dr. Paley has introduced. Let us then suppose that in the assizes of any one year ten innocent men were put, and afterwards known to be put to death, in order to sustain such rules of adjudication as prevented the escape of a hundred guilty men. The magnitude and simultaneousness of the evil would, I am sure, excite immediate and universal alarm. The public voice would be raised for some alteration in the degrees of punishment or the rules of evidence. The safety of innocent men would be purchased even at the hazard of diminished security from the depredations of the guilty. I believe too, that the anguish which our venerable Judges must suffer from such a number of events would efface from their minds the ingenious reasoning of Dr. Paley, and induce them to co-operate with the legislature in preventing the recurrence of similar wrongs and similar misery.

They would be solicitous to lessen, though it might not be in their power wholly to avert, the dangers which spring from the mere possibility of confounding the innocent with the guilty. They would pursue such rules of adjudication, and assist jurymen in forming such right intentions and right judgments as should leave the meanest subject in the least possible peril of being "unknowingly sacrificed."

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* Hor. de Arte Poet.

No principles of judicature, as Dr. Paley admits, can require that such a misfortune as capital punishment should befall an innocent man with the knowledge of those who expose him to it; and indeed human nature revolts from the contrary supposition. The laws, I should also admit, would be substantially and extensively useful, though such punishments were now and then inflicted unknowingly. Dr. Paley is anxious to vindicate them when they are so inflicted—I am solicitous to prevent them if possible, from being inflicted at all, and I also think that the old maxim which Dr. Paley resists, is a most powerful and salutary mean of such prevention.

Has the popular sentiment, I would ask, such an influence upon the official conduct of men who try capital offences, that in order to make them understand the usefulness of laws, and assist in supporting it, they should be disturbed in their belief of such a principle as is likely to avert the frequent recurrence of cases in which the innocent would share the fate of the guilty? Amidst the acknowledged and the experienced efficacy of public justice, would there be any real danger of that universal confusion which Dr. Paley describes, or even of a growing disregard to the laws which prevent it, if, according to the actual or the probable number of such cases, we should let ten men who are probably guilty escape, lest one man who in our estimation at the moment is possibly innocent, should suffer? Is there not danger that unmerited condemnations would be multiplied, if men should be weaned from their attachment to a rule which is rarely called into direct action, and which, if so called, produces the advantage of justice to one party, with more or fewer inconveniences arising from the relaxation of judicial rigour towards ten? Are the inconveniences from a contrary process counterbalanced to the individual, by the consideration that he falls for his country, or to the community, by clear and decisive proofs that his country could not be protected by any other alternative than his death? The wisdom of the sufferer could not be much impeached by his doubts upon the validity of the justification proposed to him. The morality of the spectators is more likely to be improved by their sympathy in his sorrows, than in his patience. The interests of society would not be very materially injured by the escape of ten guilty men as the condition of safety to one innocent man. Even in crimes not punished with the rigour of death,

there is some violation of the laws "which uphold the welfare of the community." There is some "interruption of the general security"—there is some tendency to produce in part that "universal confusion" of which Dr. Paley speaks—there is a visible necessity for "some restraint from the dread of punishment"—there is some actual, though imperfect restraint from that dread. But as all those crimes have more or less of all those malignant properties just now mentioned, would it therefore be right to make those restraints yet more effectual by extending the penalty to death? Blackstone teaches me to "expect a better reason than the loose one which is generally given, that it is found by former experience that no lighter penalty will be effectual;" and he farther tells us, that "though the end of punishment is to deter men from offending, it never can follow from thence that it is lawful to deter them at any rate, and by any means, since there may be unlawful methods of enforcing obedience even to the justest laws." *

If then the security of the community is not incompatible with the imperfect operation of penalties less than death, would it be very extensively endangered, if ten guilty persons were permitted sometimes to escape, lest one innocent man should suffer? Would there be any distinct vestiges of the frightful competition which Dr. Paley mentions, between the safety of one innocent man purchased by impunity to ten guilty men on the one hand, and the general authority and usefulness of the laws on the other hand? Would the usual rules of adjudication be no where regarded? Would the usual degrees of credibility be no where admitted? Let us then beware of reasoning confidently and indiscriminately from partial, obscure, and very remote tendencies to obstruct the course of those rules, and to perplex the degrees of that credibility, when we are in quest of arguments to bring our humanity into subjection to our acuteness, and to discover palliatives for an evil so very great, though it be not very frequent, as the destruction of an innocent man. Crimes will be hated—criminals will be feared and watched—punishments will be inflicted, and bad men will continue to be deterred by them, though jurymen and Judges should be disposed to act in confor-

* Book iv. cap. 1.

nity with the real import and real spirit of the principle which Dr. Paley has opposed. The guilty men who now escape, rarely owe their acquittal to a full conviction of their innocence, but to such doubts upon it as are suggested by the magnitude of a punishment which in many cases exceeds our notions of proportion between crimes and penalties; and by an uneasy feeling that we who condemn, expose an offender to more rigour than in our apprehension he deserves. But the evil arising from their acquittal might be diminished by a change, not so much in the rules of adjudication, as in the degrees of a penalty, which if mitigated would be more likely to be inflicted.

The actions of men plainly shew that their judgments will not bend down to the dogma of Cato the Censor. Hominem improbum non accusari tutius est, quam absolvi."* His acquittal may have been effected with extreme difficulty, which other men will observe, though he should not feel it. A small change in the colour of facts, or the bearings of testimony, may exclude him from being acquitted again, if he should again offend. The remembrance of a former offence nearly proved will lessen his chance for mercy, after he has been fully convicted. But if for the same purpose of bringing condemnation on the guilty, Judges were to insist upon the same general topics for which Dr. Paley contends, we seldom could listen to them without disapprobation, especially if it should appear, that in consequence of such topics having been introduced and sanctioned† by such high authority, the scruples of jurymen had been vanquished, and the

* Livy, lib. xxxiv. par. 4.

† I put a case not very likely to happen in our English courts. But if it ever should happen, the same feeling might be excited against the Judge, which the brutal language of an accuser once provoked: "Quintus Flavius Augur a Caio Valerio ædili ad populum reus actus, cum quatuordecim tribuum suffragiis damnatus esset, proclamavit se innocentem opprimi. Cui Valerius æque clara voce respondit, nihil sua interesse nocensne an innoxius periret, dummodo periret. Qua violentia dicti reliquas tribus adversario donavit. (Vid. Valer. Max. lib. viii. cap. 1.)

The Roman tribes had no partiality to Flavius, nor were they indifferent to the offence charged upon him. But they thought it better to curb the savage spirit of the accuser, than to punish the probable guilt of the accused.

sentence of death had been passed and executed upon persons, who, after the misfortune, as Dr. Paley calls it, were found to be innocent. But if it were known that an innocent man owed his escape to the same caution which had operated in favour of the guilty, even the speculative conviction we might have upon those topics in our closets, would in a court of justice be practically overpowered by an instantaneous and lively sentiment of approbation.

If in reality guilty men seldom escape lest the innocent should suffer, the popular maxim does no great harm. But if innocent men often suffered lest the guilty should escape, the absence of that maxim would be most injurious to individuals and most alarming to the community. Again, if guilty men should often escape lest the innocent should often suffer, great danger, I grant, would arise, and great alarm. But the frequency of either of the two last cases would produce the same happy effect. In consequence of our fears that the guilty would injure ourselves, and that we should ourselves be the authors of injury to the innocent, our present rules of adjudication would be carefully revised, and some expedients would be contrived for making the future punishment of the guilty more compatible with the future safety of the innocent.

That Being who foresees and controls all events, may permit, and (with the deepest reverence be it spoken) may even ordain evil, "that good may come." But great indeed ought to be the probability, and great the quantity of good—obvious, too, and most imperious ought to be the necessity of obtaining it, before such a creature as man knowingly runs the smallest hazard of committing such a mistake as subjects the innocent with the guilty to the loss of life—before he pleads his own ignorance and imbecility in vindication of a measure against which the previous consciousness of that ignorance and that imbecility should have put him most strictly upon his guard—before he assumes that the general good as intentionally produced by himself, will in all cases, or to every extent, compensate the particular evil unintentionally inflicted by himself—before he presumes to treat lightly the possible aggravations of that evil, from repetition facilitated by precedent, or from general inquietude excited by general insecurity—before he forgets that the general usefulness and authority of the laws are experimentally known to be maintained,

though from error or even design certain rules of adjudication are not in some instances pursued, and certain degrees of credibility are not admitted—before he allows that they could not be maintained, if ten guilty men were sometimes to escape, lest one innocent one should suffer—before he believes that they could be maintained very long, if one innocent man often suffered, lest ten guilty men should as often escape.

The remote possibility of such a case as I have been now considering, supplies an additional reason against the multiplication of capital punishments. If the penalty were less than death, there would be room for some compensation to the feelings and the secular interests of the party when his innocence was known; and who shall say that continuing to exist, and standing upon the watch to avail himself of every favourable opportunity for discovery, he is not the likeliest person to search for every kind and every degree of proof by which that innocence can be established? Much may be done by the zeal and activity of his friends or his family. But in time, place, and many other circumstances of action, there are innumerable particulars which the agent alone is able to explain, and of which he to-morrow may give an explanation more satisfactory than could be given to-day. When an innocent man has been condemned to die, we must prove that, according to the established degrees of credibility in evidence, there arose strong probability of his guilt. Hence, guided by the same principle upon which I have been reasoning, Beccaria has proposed such an expedient as seems to me far more equitable than the sentence which Dr. Paley would permit to be executed, when in the view of a court of judicature, there is "a mere possibility" of innocence. "Banishment," says Beccaria, "should be the punishment of those, who being accused of an atrocious crime, are probably, but not certainly guilty." For this purpose would be required a law, the least "arbitrary, and the most precise possible, which should condemn to banishment those who have reduced the community to the dreadful alternative, either of fearing or punishing them unjustly: still, however, leaving them the sacred right of proving their innocence."* Such a law well-administed would avert

* Cap. 25.

from the accused a grievous wrong, and give to the community all necessary security.

"That moral certainty which excludes the possibility of innocence, and which determines every man in the most important transactions of life, is," I grant, with Beccaria,* "only probability;" and I would farther grant, that the imperfect proofs by which the innocent might clear himself, but does not, become perfect, by which I understand, the best adapted under certain circumstances to a certain end. But as even under those circumstances they sometimes answer ends the very contrary to those for which any evidence is admitted, or any laws are made, the utmost care should be taken to prevent such a contingency, or to alleviate the effects of it when it occurs. Evidence can seldom or never amount to certainty. But the punishment inflicted on account of evidence is a real and a certain evil to the sensibility of a sufferer, and in the view of a Judge. And therefore we cannot be too cautious in inflicting that evil which in the estimation of legislators is greater than all others, and which beyond all others is irreparable.

The subject I have been now considering may be most usefully illustrated by the remarks of Mr. Bentham upon remissibility as a property of punishment. "The general presumption," says this great writer, "is that when punishment is applied, punishment is needful: that it ought to be applied, and therefore cannot want to be remitted. But in very particular, and those always very deplorable cases, it may by accident happen otherwise. It may happen that punishment shall have been inflicted, where, according to the intention of the law itself it ought not to have been inflicted: that is, where the sufferer is innocent of the offence. At the time of sentence passed he appeared guilty, but since then accident has brought his innocence to light. This being the case, so much of the destined punishment as he has suffered already there is no help for. The business is then to free him from as much as is yet to come. But is there any yet to come? There is very little chance of there being any, unless it be so much as consists of chronical punishment: such as imprisonment, banishment, penal labour, and the like. So much

* Cap. 14.

as consists in acute punishment, to wit, where the penal process itself is over presently, however permanent the punishment may be in its effects, may be considered irremissible. This is the case, for example, with whipping, branding, mutilation, and capital punishment. The most perfectly irremissible of any is capital punishment. For though other punishments cannot, when they are over, be remitted, they may be compensated for: and although the unfortunate victim cannot be put into the same condition, yet possible means may be found of putting him into as good a condition as he would have been in if he had never suffered." *

Dr. Paley † contends, that "the proper end of punishment is not the satisfaction of justice, but the prevention of crimes; and that prevention, which is the cause and the end of that punishment, ought also to regulate its severity." Such is the opinion also of Beccaria, when he tells us ‡ that "though punishments be productive of good, they are not on that account just, but that to be just they must also be necessary;" and that "all punishments which exceed the necessity of preserving justice, or that bond which is necessary to keep the interests of individuals united, are in their nature unjust." § Though Dr. Paley professes not to enquire in what sense, and seems to doubt whether with truth in any sense justice, may be said to demand the punishment of offenders, I have little difficulty in understanding what is meant in popular discourse by the satisfaction of justice. But I disapprove of the principle contained in the phrase, and I consider the phrase itself as an instance of the confusion introduced into moral reasoning by the use of metaphor and personification. "Cautious," says Beccaria, "should we be how we associate with the word justice an idea of any thing real, such as a physical power, or a being that actually exists." So far, however, as the word implies the retribution "of so much pain for so much guilt," I readily allow with Dr. Paley "that the demand of such retribution is not the motive or the occasion of human punishments."

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* Bentham's Introduction, chap. 15. on remissibility.

† Chap. 9. ‡ Cap. 25. § Cap. 2.

The example of Dr. Paley in contrasting the justice of man with that of the Deity, will, I hope, warrant me in stopping here to observe that I do not in all respects assent to the distinctions which that excellent writer has made between them. It appears to me that so much pain inflicted for so much guilt unexpiated by repentance, would have been a proposition more correct than that which he has employed when he is speaking of the Divine justice. The conceptions of that attribute which our views of the moral world suggest to us, and the conscious limitation of our own foresight and our own strength, should, I grant, teach us to reason with great caution and great reverence from the judicial dispensations of the Deity to human laws. I cannot, however, dissemble that the representations which Dr. Paley has given both of Divine veracity and Divine justice appear to me, I do not say erroneous, but defective. Upon the latter we must argue from the light of natural religion, and upon the former we must appeal to the evidence supplied by revelation. Now, if justice requires that so much pain be inflicted for so much voluntary guilt, it seems also to require that so much pain should not be inflicted after so much expiation made for guilt by voluntary amendment. If the veracity of the Deity requires him to punish offenders, because he has "promised" so to punish them, it must also require that a part, or the whole of their punishment should be remitted to penitents, because he has likewise promised to accept their sincere and active endeavours to repent. "In the sight of the Deity, that repentance may not only be a bridle to prevent the sinner from going astray, but a spur * to make him advance with more speed in the road to perfection." In the sight of the Deity, that repentance may amount to a complete change of all the immoral propensities or habits which exposed the offender to punishment, and it may ultimately render him a fit subject even of reward. Man, it is true, cannot so penetrate the hearts of his fellow-creatures as to calculate the good effects wrought in them by remorse, and even if he

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* See Pistorius's Notes upon Hartley, p. 621, in the quarto edition of Hartley.

could calculate them, the necessity of deterring other men from similar offences would often compel him to punish more or less where the Deity may have forgiven. Still, however, it is of importance for us to remember, that the mercy of that Deity is much oftener recommended to us as a model of imitation than his justice; and though precepts of this kind may be considered as chiefly applicable to the conduct of private individuals, yet the principles upon which they are founded deserve to be regarded by legislators so far as they can follow them consistently with the common weal. It is, indeed, a salutary, an essential, and even characteristic quality of justice* itself, that, in

* I have employed the word justice in the sense which it bears, usually in popular discourses, and sometimes in philosophical writings. We distinguish it, in our common apprehensions, from Mercy; and our philanthrophy is gratified when mercy triumphs over what we call justice. But, if mercy were apparently to produce what we call injustice, we should disapprove of it. The secret ground of our disapprobation is our sense of that very utility of which our philanthropy approves when it is effected by means to which we give the name of justice. Mercy, also, under the circumstances in which alone it ought to operate, may itself be considered as a species of justice in the extended signification which the term sometimes carries with it, both in ancient and modern writers, and both of them, as usually distinguished from each other, but referred to a common principle of utility, fall under the generic name of benevolence. I wish not to disturb the received forms of language; and yet I would be understood to admit much truth in the following observations of Mr. Bentham:

They who adopt what he calls the Principles of Asceticism and Sympathy exclusively, "set up," he says, "a phantom of their own, which they call justice, whose dictates are to modify, which, being explained, means to oppose, the dictates of benevolence. But justice, in the only sense in which it has a meaning, is an imaginary personage, feigned for the purpose of discourse; whose dictates are the dictates of utility applied to certain particular cases. Justice, then, is nothing more than an imaginary instrument employed to forward on certain occasions, and by certain means, the purposes of benevolence. The dictates of justice are nothing more than a part of the dictates of benevolence, which, on certain occasions, are applied to certain subjects, to wit, certain actions."—Elements of Jurisprudence, p. 123.

providing expedients for the public security, it should be wholly exempt from that vindictive spirit which obstructs the exercise of mercy. Great I know to be the authority of Dr. Paley's name, and therefore I am anxious to guard his opinions from the possibility of abuse and perversion by men who would rashly argue "as we cannot be like the Deity, it signifies little how much we are unlike him."

Prevention, as vindicated and illustrated by Dr. Paley, is I allow, the chief end, and therefore ought to be the chief "measure of human punishment." I do not, however, chuse to call it the sole end, because where punishments can be so administered as to correct the offender himself, as well as to deter other men, Dr. Paley I am sure would have approved of them as suited to this additional, though subordinate purpose. He would farther have admitted, that punishments as well as crimes are evils, and that, whether inflicted by man or by the Deity, they must have good for their ultimate object before we could pronounce them to be just. But that "so much pain should be inflicted for so much guilt," resembles the lex talionis of fallible and vindictive man, rather than the measures of a perfect being. Justice in the Deity must bear some resemblance to justice in man. It cannot be supposed to accumulate the evil of punishment upon the evil of crime without some ulterior purpose, and if that purpose be called the satisfaction of the Judge who punishes, we may still contend that this very satisfaction itself must be founded upon the good which punishment at some time or other, and in some degree or other, will produce to some sentient being or other. It is difficult to conceive how the administration of Divine justice in future punishments should operate by example; and it struck me very forcibly, that Dr. Paley has not given the slightest intimation of their tendency when inflicted, to correct offenders themselves. Perhaps, upon this point he did not see any immediate necessity for communicating his own opinion. But as the comparison which he has introduced between the justice of God and that of man unavoidably turns the attention of every reflecting mind towards a subject most important to us, I feel myself not only authorised, but almost required to state my own sentiments; and happily for me, they have been expressed with the greatest clear-

ness and precision by the acute and learned Pistorius in his notes upon Hartley.*

"The attributes of righteousness and justice, if properly considered, are by no means so adverse to benevolence as might be inferred from the active satisfaction of the Deity in truth and order, and his equally active dislike to whatever departs from them. The most righteous and just ruler may also be the most benevolent, if he be the most powerful. His benevolence, it is true, would not be displayed in a similar manner to his dutiful and undutiful subjects; he would not reward the latter as the former; but his good will towards them would show itself in such dispositions and regulations as would render them equally obedient, and by these benevolent, though forcible measures, would he reveal his justice and righteousness, maintain the authority of his wholesome laws, and promote the well-being of his whole kingdom. He must punish; but his punishments would be corrections. We may admit, not without grounds, that the distinction betwixt punishment and correction, the end of the former being to prevent the spreading of wickedness by warning and deterring others from it, and of the latter, to amend those to whom it is applied, is founded on the weakness of mortal rulers, and not applicable to God. Mortal rulers are not always able to punish in such a manner as to amend those on whom they inflict punishment. They cannot in the same action consult the private advantage of the individual and the public benefit of the whole, so that they are obliged to distinguish the two, and for the general good sacrifice the less to the greater. Both these ends, indeed, may be compatible with each other. We may so punish that the punishment may be a mean of reclaiming the punished, and at the same time prevent the spreading of vice by serving as a warning to others. Thus when we distinguish punishment from correction, this distinction will only hold, it appears, whilst we speak of human correction and punishment: since the distinction arises not from the nature of the things themselves, but from the weakness of mankind. Even amongst men a sovereign would unquestionably be deemed good, wise, and just, who knew how to punish so as not only to prevent

* See the quarto edition of Hartley's Works, p. 597.

transgressions, hinder the spreading of vice, and maintain order, peace, and security, throughout his dominions, but likewise to amend the criminal himself, and render him an instrument of his own happiness, and an useful member of society, by the same punishment which served as a warning to others. But if this cannot be done, and the sovereign by shewing kindness to a single criminal must do an injury to the whole community, in preferring the less to the greater good, being unable, from his limited power, to prevent the extension of vice, but by the sacrifice of the guilty; the idea of the justice of punishing, as a virtue in the sovereign, originates in his want of power; a justice which, though beneficial to the whole, is a hardship to the party that suffers, and consequently not so perfect and good as it would be were it at the same time beneficial to society and to the offender. Let it not be supposed, that this inability to correct in every case of punishment is so universal as to extend to God; it is proper to man alone, and proceeds from the following causes. We have not time, space, and means sufficient so multifariously to diversify our corrections as to place the offender in as many various unpleasing situations as are requisite ultimately to bring him to a serious reflection on his real good and permanent attention to it. We cannot render his punishment so intense as to make the desired impression upon him, without its becoming fatal. Finally, too, we are persuaded that certain offenders, particularly dangerous ones, must be punished with death, if we seek the security of society. Would slighter punishments serve in such cases, punishments that would not destroy the transgressor, but preserve him an useful member of society, no rational or well-minded man would justify capital punishments, but hold them equally pernicious and detestable. We may even hope, that when the benevolent and more enlightened eye of philosophy shall have inspected that important part of legislation, the distribution of punishments, this will become less and less destructive, without being less efficacious, and be gradually converted into correction of offenders. Unless we ascribe human weakness, and the shackles of humanity, to that all-wise and omnipotent God, whose moral sovereignty over his intelligent creatures is not confined to the narrow limits of time, who has unnumbered, and to us inscruta-

ble ways of leading his subjects to his purposes, who, since they actually are, and must eternally remain dependent on him, can place them in such circumstances that his designs in them, and through them in others, must be accomplished, we are forced to allow, that with respect to him our distinction betwixt punishment and correction is inapplicable, and that all his punishments at least may be at the same time corrections. And since this may be, we ought from the perfection of his benevolence to expect, that so it will be."

But to whatever extent I may differ from Dr. Paley's explanation of "a rule which befits the absolute and perfect justice of the Deity," I think with him that "it is a rule which ought not, without the greatest caution, to be pursued by human laws," and that "the cause of human punishment appears to be chiefly founded in the necessity of preventing the repetition of an offence." It is, however, painful for me to reflect that in the pursuit of such prevention human laws are often carried beyond the limits of real necessity; and of this excess I will lay before you a striking instance in which the possibly innocent were condemned to suffer death as well as the guilty.

When Virgil says of Rhadamanthus "castigatque auditque dolos,"* he meant to adapt his words to the convenience of his verse, rather than to describe the real order of events. But even if the words of the Poet were to be understood literally according to their present position, the rashness of mankind would supply us with a practical illustration of them. In a book of travels, which was written by Dr. Edward Brown, the learned son of a more learned father, Sir Thomas Brown, and to which Johnson gives the praise of scrupulous and exact veracity, I met with this striking passage: "Among the odd customs † of Carinthia there is an old one delivered of this place, (Clagenfurt, the capital,) that if a man were vehemently suspected of theft they hanged him, and three days after judged of the fact; if he were found guilty, they let his body hang till it be corrupted; if otherwise they took down the body, buried it upon the public account, and said prayers for his soul."‡ Brown refers in the margin of his work

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* Æn. vi. † See Appendix, Note A.

‡ See Brown's Travels, p. 123.

to Æneas Sylvius for the fact which he recorded, and he evidently believed it. The Carinthians, it seems, spared not the possibly innocent lest they should be annoyed by the guilty, and the custom imputed to them was far more cruel than that of the Danes, "among whom a person who was detected flagrante delicto and with the mainour, might be taken and hanged on the spot without accusation or trial."*

Compelled as I am to differ from Dr. Paley in his opposition to a popular maxim, the merits of which I have endeavoured to unfold, I would not be understood to impute to this excellent man a criminal insensibility to the sufferings of his fellow-creatures; and it is with the highest satisfaction that I shall now produce from his works two proofs of his humanity. In chapter VIII. he speaks of the unanimity required in the verdict of juries, as "one of the peculiarities in the judicial constitution of this country which do not carry with them the same evidence of propriety that recommends almost every other part of the system." "Nevertheless," says he, "the effects of this rule are not so detrimental, as the rule itself is unreasonable. In civil suits, when the conference of jurymen with one another does not seem likely to produce in the jury the agreement that is necessary, they will naturally close their disputes by a common submission to the opinion delivered from the Bench." This practice no doubt corrects in part the unreasonableness charged upon the rule, and I state it for the purpose of contrasting it with another effect which Dr. Paley imputes to the same rule on another subject. "In criminal prosecutions it operates considerably in favour of the prisoner; for if a juror find it necessary to surrender to the obstinacy of others, he will more readily resign his opinion on the side of mercy, than of condemnation." Dr. Paley here puts a case which may shew the unreasonableness of the rule, but which also, shews something more. A juror has no doubt upon the guilt of the accused. He finds it necessary to surrender his opinion to what he thinks the obstinacy, and I might think the conscientious firmness, of other jurors. He re-

* See Blackstone, book iv. chap. 23.

signs his opinion on the side of mercy. Does Dr. Paley directly condemn such resignation? He does not. Does he advise that the jury, as in civil cases, should close their disputes in common submission to the opinion of the Judge? He does not. He produces the submission of him who would condemn to those who would acquit, as, in effect, beneficial indeed to the accused, but detrimental perhaps, to the public, and yet not so detrimental as the rule itself is unreasonable. He would not call the effect detrimental at all, except in cases where the juror who surrenders is right, and they who resist and prevail over him are wrong, in their respective judgments on the accused. He must allow, that the presumption for truth is in favour of eleven as opposed to one—he must farther allow that in cases where the judgment of one juror is sound, and that of eleven is erroneous, the cause of that erroneous judgment may sometimes be wariness rather than obstinacy, the cause of that sound judgment may be a previous disposition to severity rather than to lenity, and the rule which suffers the wary to prevail over the severe, must be in its general effects less detrimental, than a rule with opposite tendencies. He, in truth, has stated the very circumstances of yielding on the side of mercy as making the rule less detrimental, though it be a rule in itself unreasonable. "Though there be less assurance that the verdict is founded in reasons of apparent truth and justice, than if the decision were left to a plurality or some certain majority of votes," still Dr. Paley has not proposed to remedy this inconvenience by leaving our decisions upon life in criminal prosecutions to such plurality or majority, however judicious a regulation of this kind may be in civil cases.

Again, Dr. Paley condemns "acts of attainder, of confiscation in bills of pains and penalties, and all ex-post-facto laws whatever, in which Parliament exercises the double office of legislator and Judge." He thinks that whoever understands the value of the rule by which those offices are separated, or collects the history of the instances in which it has been invaded, will be induced to acknowledge that it had been wiser and safer never to have departed from it, and that nothing but the most manifest and immediate peril of the commonwealth will justify a repetition of these dangerous examples. If the laws in being

do not punish an offender, let him go unpunished; let the legislature, admonished of the defect of the laws, provide against the commission of future crimes of the same sort. The escape of one delinquent can never produce so much harm to the community as may arise from the infraction of a rule upon which the purity of public justice, and the existence of civil liberty essentially depend."* I am aware of numerous and important differences between the case here stated, and that of an innocent man condemned by laws enacted previously to the crime with which he is charged, and not administered by those who enacted them. But let us remember, that the offence committed by the delinquent of whom Dr. Paley is speaking, is generally more malignant than that of common offenders—that his guilt is asumed by Dr. Paley—that the danger arising from the double office of Legislator and Judge in those who are to punish him ought to have acted as an additional restraint upon him, and yet, that in the view of Dr. Paley his escape produces less harm to the community, than the infraction of a rule. I honour the wisdom, equity, and humanity of such a writer, and the remembrance of his intellectual and moral endowments makes it more painful for me to find him engaged in opposing the long established maxim, "That it is better to the community for ten guilty men to escape than one innocent man to suffer." If Dr. Paley had left this opinion unmolested, and if he had also balanced the mischiefs of frequent executions, with their actual conveniences, I should say of him as Cicero said of Cato: "Non is quidem vir sapientior fuisset, nec melior, neque enim esse poterat; sed paullo ad lenitatem propensior."†

Let me now return to the debate on Sir Samuel Romilly's late motion. By the new statute private stealing may be accompanied by aggravations which subject the offender to transportation for life: and shall it be said again, as in the House of Commons it once has been said, that such punishment carries with it "a proclamation of impunity?" That statute has the peculiar merit of endeavouring to adapt a gradation of punishment to the gradation of malignity in crimes called by one common name. For

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* Chap. 8. † Cic. pro Murena.

my part, I welcome transportation as a substitute for death. But with the general properties of it as a punishment I am by no means satisfied. When offenders were first sent to North America "they went to a country where being unknown they might not be very often reproached for their crimes, where a little would maintain them, where their expences would be moderately low, where the price of labour was high, and where if a man reform, his reformation would produce for him many comforts and conveniences."*

But the system now adopted at Botany Bay, whatever may be its other properties, certainly carries with it a degree of severity rarely experienced by those who were formerly banished to our American colonies. The defects of it have been most clearly pointed out by Mr. Bentham, they have suggested to his active and sagacious mind a plan which, in my opinion, is likely to answer all the best purposes of punishment, both in correction and prevention; and the day I hope is not very distant, when the particulars of that plan will be submitted to the wisdom of Parliament.

"Exile," says Dr. Paley, "is in reality a slight punishment to those who have neither property nor friends, nor reputation, nor regular means of subsistence at home."† This observation, I believe, to be sometimes just. Yet there may be cases in which it is difficult for us even in imagination so to place ourselves in the situation of the persons transported as to determine whether exile be to their sensibility a light punishment. They leave behind them relations, friends, scenes more or less endeared by early association, and a country to which, in the midst of all their depravity, they may retain some confused notions of attachment and duty. But if those notions are in all cases extirpated, would it be prudent to employ offenders, so often as they are employed, in the army and the navy?

Where Mr. Eden condemns the practice of hanging criminals for returning from transportation, when it was "not in the nature of a conditional pardon, but directed by positive law," he considers such severity "as an attack upon the natural senti-

* See Smith's History of New York, quoted by Dagge, vol. iii. p. 177. † Cap. 9.

ments of the heart," and supposes that they to whom even parents, children, and relations may be no longer dear, are seldom so abandoned, as "patriam non desiderare." * If, indeed, extirpation from the society of their fellow-subjects be a punishment so light, as Dr. Paley seems to think it, how shall we account for the eagerness of men to return to that country where they must be conscious of having neither property nor reputation, and where the repetition of their former crimes must, as they well know, expose them to more rigorous treatment from the laws?

My objections to transportation, as a punishmeat for private stealing, or indeed any other offence, are chiefly founded on a reason which has been forcibly insisted on by Dr. Paley and other writers. "It answers," says Dr. Paley, "the purpose of example very imperfectly. The sufferings of a transported convict are removed from the view of his countrymen, his misery is unseen, his condition strikes little or no terror on those for whose admonition or warning it was intended." Beccaria also, in chapter XIX, condemns the slavery of a transported criminal, "as an example to societies which he never offended, an example absolutely useless, because distant from the place where the crime was committed."

In the debate upon the new statute, imprisonment was proposed, and circumstances were to determine whether it should, or should not, be accompanied with hard labour. But with the reasons assigned for the imprisonment as a punishment I have always been dissatisfied; for "when men are immured in a loathsome prison they are of no service to society, and their sufferings are so secret as not to operate on others by way of example." †

By the humanity of Sheriffs care is usually taken that the unavoidable miseries of a jail may not be aggravated by the unrestrained cruelty of the jailor, and the expectations which Mr. Eden ‡ formed from the industrious refinements of a sensible age, have been in part fulfilled by improvements in the airiness and extent of the buildings. But Mr. Eden agrees with Dagge in considering "imprisonment, when inflicted by law as a punishment, as not conformable with the principles of wise legislation."

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* Cap. 14. † See Dagge, vol. ii. p. 179. ‡ Cap. 6.

He assigns the same reason, "because it cannot communicate the benefit of example, being in its nature secluded from the eye of the people." He further remarks that "it sinks useful subjects into burthens on the community, and has always a bad effect on their morals."

I am persuaded that no legislator would seriously vindicate the continuance of such a punishment as consistent with public justice or public utility, if his mind were strongly impressed with the luminous description which a celebrated writer has given of its effects: "The misery of jails," says Johnson, "is not half their evil; they are filled with every corruption which poverty and wickedness can generate between them; with all the shameless and profligate enormities that can be produced by the impudence of ignominy, the rage of want; and the malignity of despair. In a prison the awe of the public eye is lost, and the power of the law is spent: there are few fears: there are no blushes. The lewd inflame the lewd, the audacious harden the audacious. Every one fortifies himself as he can against his own sensibility; endeavours to practise on others the arts which he practised on himself; and gains the kindness of his associates by similitude of manners."*

It is singular enough that the punishment for private stealing by hard labour, which has lately been proposed as one of the substitutes for death, seems to have occurred, though indistinctly, to the very legislators by whom the penalty of death was first appointed. By the statute of the 8th of Elizabeth this crime, when committed *clam et secrete*, was excluded from the benefit of clergy, and it is necessary for every indictment to contain those words in order to subject the accused party to capital conviction. Now this very statute in its preamble says, "that it is made to the end that the fraternity or brotherhood of cutpurses and pickpockets may not continue to live idle by the secret spoil of good and true subjects. Does not then this preamble itself seem to intimate that the proper remedy is to oblige the criminal to hard labour?" †

My wish is that confinement should "always ‡ be accompa-

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* See Idler, No. 38. † See Dagge, vol. ii. chap. 10. sect. 2.
‡ Dr. Paley says, that "when jails are once provided for the

nied with labour."* longer or shorter, lighter or heavier, according to the malignity of the offence. The last and highest degree of this punishment would, I am sure, be a most desirable substitute for many of the capital punishments which are now inflicted. It would be more terrible to offenders, and more salutary to society. "Perpetual slavery," says Beccaria, † "has in it all that is necessary to deter the most hardened and determined, as much as the punishment of death. I say it has more. There are many who can look upon death with intrepidity and firmness; some through fanaticism, and others through vanity, which attends us even to the grave; others from a desperate resolution either to get rid of their misery or to cease to live. But fanaticism and vanity forsake the criminal in slavery, in chains and fetters, in an iron cage, and despair seems rather the beginning than the end of their misery. The mind by collecting itself and uniting all its force, can, for a moment, repel assailing grief; but its most vigorous efforts are insufficient to resist perpetual wretchedness." They who would shelter their dislike of chains under pretended lenity, may tell us "that perpetual slavery is as painful a punishment as death, and therefore as cruel." But to such refinement Beccaria ‡ has given a direct and invincible answer: "If all the miserable moments in the life of a slave were collected into one point, it would be a more cruel punishment than any other; but these are scattered through his whole life, whilst the pain of death exerts all its force in a moment. There is also another advantage in the punishment of slavery, which is, that it is more terrible to the spectator than to the sufferer himself; for the spectator considers the sum of all his wretched moments, whilst the sufferer, by the misery of the present is prevented from thinking of the future." After the com-

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separate confinement of prisoners, the choice between solitary confinement with hard labour and with nothing to do may soon be determined by experience." I think that for the punishment of crimes which have endangered property, it were better in all cases whatsoever to unite labour with confinement, and that acute pain should be added where the offence is in its own nature infamous, with diminished allowance for the produce of work.

* See Dagge, vol. i. p. 327.

† Chap. 28. ‡ Ibid.

mission of the crime "the sufferer may indeed find resources and consolations of which the spectator is ignorant." But the important question with respect to an offender is, what effect the expectation of such punishment is likely to have upon his mind when "he foresees that he must pass a great number of years, even his whole life, in pain and slavery, a slave to those laws by which he was protected; in sight of his fellow-citizens with whom he lives in freedom and society. He makes an useful comparison between those evils, the uncertainty of his success, and the shortness of the time in which he shall enjoy the fruits of his transgression. The example of those wretches continually before his eyes, makes a much greater impression on him than a punishment, which, instead of correcting makes him more obdurate."

You will not forget the apology I offered for appealing to the authority of celebrated writers in the defence or illustration of my own opinion. Many of their observations I had been fortunate enough to anticipate. But the clearness and precision of their language deterred me from employing my own. The same sentiments will naturally occur to men of reflection when they are contemplating the same subject, and as the pursuit of truth is more worthy of an ingenuous mind than the affectation of originality, we may reasonably suppose that some of the writers whom I have quoted, had availed themselves of all the assistance they could derive from the labours of their predecessors. If the principles for which they contend be founded in justice, and useful to society, I shall never be ashamed of my readiness to adopt, or my solicitude to disseminate them. Truth opposed to prejudice, reason to usage, and humanity to rigour, have many difficulties to encounter. But every advocate not grossly unskilful gives additional weight to their claims, and may hope for attention from the candid, though he should fail of impressing conviction upon the inconsiderate or the unfeeling.

The opponents of Sir Samuel Romilly laid great stress upon the number of offenders who are guilty of "larceny from the person;" and to their arguments I shall reply, what impartial inquirers must often be disposed to say on other occasions, "nec nihil, neque omnia." * They who admit the same premises are

* Terent. Adelph. Act i. sc. 2.

not always led by them to the same conclusions, and in the discussion of moral questions it often happens that difficulties arise, not upon the truth of a general principle, but upon the degree in which it is applicable to particular points of practice, and upon the purposes for which it ought to be controuled by other principles, equally comprehensive, or equally sound.

That the frequency of an offence is sometimes a solid plea for enforcing and even enacting severe statutes, will, as a general proposition, not be denied. And the utmost which a man of reflection would require is, that when such frequency has been long and considerably checked, such severity should be proportionably relaxed.* You avowedly did not employ death, till criminals were numerous—you should have ceased to employ it, when they became fewer—you may resume it, when they become numerous again.

Whether it be possible for some kind of small offences to be so frequent as to justify capital punishment for the prevention of the aggregate mischief produced by them is, also, a general question, upon which good men will pause, before they decide in the affirmative. In my view of the subject,

> "Mores sensusque repugnant,
> Atque ipsa utilitas justi prope mater et æqui."†

The number even of small crimes may render their tendency very dangerous. But would that tendency have induced Blackstone to retract or qualify his position, "That it is not the frequency only of a crime, or the difficulty of otherwise preventing it, that will excuse our attempting to prevent it by a wanton," and, as I would say, unnecessary, and therefore unjust, "effusion of human blood?" Smaller crimes are, from their very nature, most likely to be frequent, and many who commit them may make a jest of the light punishments denounced against them. But shall it be said, that their severity therefore must be

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* The principle of such relaxation is well stated by Valerius Messalinus. "Placuisse quondam Oppias leges, sic et temporibus reipublicæ postulantibus; remissum aliquid postea, et mitigatum quia expedierit." (Tacit. Annal. lib. iii. par. 7.)

† Hor. Satyr. iii. lib. i.

indefinitely increased? "Is it not obvious," says Mr. Dagge, "that if punishments are to be increased on this account, they might be aggravated till all small crimes are made capital? But such a system of legislation as this reasoning tends to establish would indeed breathe the true spirit of Draco's laws."*

In a theological book I once met with an elaborate defence of certain principles, according to which a schoolboy incorrigibly mischievous in robbing orchards would be deservedly tormented in hell-fire for ever and ever. The writer was a good-humoured, wrangling, conceited visionary, who would have disdained to shrink from the legitimate consequences of a favourite hypothesis—who hungered and thirsted after mysteries in religion, and paradoxes in philosophy—who clung to old opinions, merely for the sake of displaying the new light which he fancied himself able to throw upon them—who with mingled pity and contempt prattled about Newton as a star-gazer, Locke as a sciolist, and Dr. Clarke as a zany; and who would have spurned at the decisions of Nominalists and Realists, of Aristoteleans and Rameans, of Convocations and Conclaves, of Universities Protestant and Catholic, and of Councils general and œcumenical, when opposed to his own ingenuity in vindicating and illustrating his own discoveries. Fortunately for his species he was doomed only to talk about matters in which he had no power to act, and his extraordinary zeal became at once ridiculous and harmless from his extraordinary absurdity.

As to Sir Samuel Romilly,† who in all probability has more sense, as well as more tenderness, than our sturdy theologian, I

* Vol. i. p. 259.

† Hitherto he has not been scared by shallow and fretful declaimers, who maintain, "una si lex tollatur, cæteras infirmari;" and though he would readily admit, "nullam legem satis commodam omnibus esse: id modo quæri, si majori parti, et in summam prosit," (see Livy, lib. xxxiv. par. 3.) yet I trust that he will persevere in his endeavours.

The same observation has been made by Hale: "If a law be squared, so that it is fit ad plurimum, and doth more good than harm, though it possibly pro nunc et tunc may do some harm, yet it is a good law." (Cap. 2, on the Amendment of the Laws.) Sir Samuel Romilly is eminently qualified to balance the harm and the good, nor will he suffer any insidious or dogmatical ap-

honour him for his noble effort, I anticipate the happiest effects from the example of his success, and I suppose that his reputation will not descend to posterity with much less advantage than that of other contemporary sages, whose names, somehow or other, are invariably associated with every mention and every recollection of those stricter ordinances which it has been their good pleasure to recommend to the legislature. I dispute not the rectitude of their intentions. I admire their abilities. But I have no ambition to partake of their celebrity, because the times in which I live present other objects for emulation, such, at least, as I should be likely to feel.

The activity of Sir Samuel Romilly will preserve the lives of my fellow-creatures. The perseverance of Lord Erskine in giving precision to the Law of Libels has added fresh security to the liberties of my countrymen. Both of them are most distinguished ornaments of a most useful profession, and the liberality, fortitude, and benevolence of both must tend to rescue in some measure that profession from the odium of an imputation which the subject I am now treating recalls to my mind.

It has been said that reforms, whether in the church or in the law, are not to be expected from men who have risen to eminence in either, that secular emoluments and honours destroy their sensibility in the cause of virtue, and that their talents are always employed, rather in stifling enquiry, than in exploring and disseminating truth. This certainly is not a fit place for me to give an opinion upon what ecclesiastics might now accomplish with propriety, or upon what they ought to attempt from higher considerations of duty. But so far as the observation just now mentioned may be thought to bear upon the memory of their forefathers, it is in many respects unfounded. If we except the gloomy tyranny of Mary, and perhaps the troubled days of Charles I. and Cromwell, we shall see that reformation in the English church *was* conducted, slowly indeed, but surely, from the reign of Henry VIII. to that of Charles II. when the angry conferences at the Savoy put a stop to all farther progress—In the articles,

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plication of Hale's remark to deter him from stripping our penal code, so far as he can, of all unnecessary severities—he will keep in view the least probable harm, and the greatest probable good.

or in the public service of the Church, alterations, well adapted to the exigences, or it may be, to the capacities of the times, and fraught with the soundest wisdom and most genuine piety, were proposed and adopted by enlightened and dignified ecclesiastics. The diffusion of knowledge, and the advancement of civilization, may be traced by vestiges yet more recent in another quarter. If we look to our civil code, we shall find that in the present age, and in others which preceded it, material improvements have been introduced into that code, either by the dicta prudentum in our courts, or in Parliament by the suggestion, or with the approbation and aid of learned lawyers: and it is with peculiar triumph that for the partial proof of this assertion I can appeal to the freedom granted to slaves while they remain in England, and gradually effected by a series of judicious and humane decisions. But the penal code, I must acknowledge, still remains a soil in which

"Infelix lolium, et steriles dominantur avenæ."*

The harvest of rank weeds is abundant, and the "labourers" who should pluck them up "are few." Yet the discouragements to their labours in the amendment of our Penal Code are less numerous than those which present themselves to the reformers of abuses, real or supposed, in other quarters. Clear it is that the welfare of society is more immediately affected by inconvenient or rigorous statutes which strike at the life of man, than by doctrinal errors (if such there be) which are more or less corrected by the diffusion of general knowledge and sound criticism. It is probable, too, that the repeal of such statutes by parliamentary authority would be less offensive to public opinion than the interference of the state in theological tenets and ecclesiastical discipline.

There is indeed one subject upon which I have already expressed my wishes that the legislature would so far interfere as to employ the public ministers of the church in giving increased notoriety and increased efficacy to our penal laws. I lately found with great satisfaction that Mr. Bentham has proposed an expedient similar to that which many years ago occurred to my own

* Virg. Georg. i.

mind. "It is highly necessary that at all times, and in particular immediately after the passing of a new law, means should be used for impressing the contents upon the minds of those whose conduct is to be governed by it. But what measure so simple or so effectual as to send by the post a copy to the ecclesiastical minister of every parish, under a general order to read it to the congregation the next church day, or the two next church days, au prone, immediately after divine service?"*

I know not the effect which Mr. Bentham's reasonings and statements produced upon the fluctuating body of legislators to whom he addressed them, nor can I calculate the attention which may hereafter be paid to them under the form of government now established in France. But I am sure that in our own country, the regulation of which I am speaking, might be introduced without difficulty, and continued without inconvenience.

Let us not be dismayed by positive assertions, nor amused by technical jargon, upon obstacles to that knowledge, the acquisition of which is necessary to the discharge of our social duties, and to the preservation of our innocence, our liberty, and our lives. Many are the complaints which I have heard from foreigners upon the inequalities and rigour of our penal code; and pained I was that Mr. Bentham, when writing to a self-appointed and tumultuous assembly of legislators in France, should speak with exact truth of his own country in the following terms: "In England the business of promulgation is a very simple affair. In the body of every act of Parliament a day is specified, in which it shall be considered as being in force. Nothing is done to circulate it by King, or Judges, or any body else; but a copy is given to the King's printing office, where it is printed in an obsolete and obscure type, and inconvenient folio form, and sold, as may be expected under a monopoly, at a dead price, and there it lies for the use of any one that has money to spare to buy it, and thinks it worth his while to do so. Every man is then supposed to know and understand the law."†

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* See page 15 of Bentham's Observations on the Judicial Establishment proposed in France.

† Bentham's Observations, page 15.

The facts above mentioned are equally notorious and lamentable I leave it with other men to determine upon the accuracy of Mr. Bentham, when, speaking of persons who are supposed to know and to understand the laws, he says, " Juries excepted, who, when they have taken upon them to pronounce a man guilty of having violated the law, are held not to have decided upon the law, it being impossible that they should understand it."

All the good ends of promulgation might be answered, if statutes recently passed were read in every congregation soon after the close of a session of Parliament, and if an abstract of the penal laws, including both the old and the new, were communicated in the parochial church of every county a Sunday or two before the assizes. The expense of copies printed on a small type might be defrayed by the parishioners themselves, and it would not be very considerable, as new penal statutes are not passed every year.

With improvements in the promulgation of our laws is connected the use of such details, and, if possible, such terms as may render them intelligible to the bulk of the community. I adverted to this subject in page 144. But I think it is of such moment, and I see such little attention paid to it in general practice, that I shall venture to resume it.

If it be right to appoint well-educated instructors for explaining and urging those duties which the moral faculties of the mind most easily apprehend, and most readily approve, it must be equally right to guide their judgments, to refresh their memories, and to alarm their caution upon those arbitrary modifications of justice which are introduced by penal statutes—modifications which do not and cannot present themselves to the unaided common sense of subjects—modifications, in the observance of which the welfare of society is supposed to be deeply interested by the persons who framed them. We all know the force of present objects, and there is reason to think that even they who are too listless on the spiritual concerns of futurity will seldom dare to be inattentive, if the conditions on which they are exposed to imprisonment, or exile, or death, were to be set before them at a season when the mind is unruffled by any selfish or unsocial passion, and in a place which is well adapted to awaken the most awful reflections. Will not the observation

which every man has occasion to make upon local circumstances or personal character, recall to his thoughts more or fewer of the particulars which are contained in the penal code? Will not every serious hearer find opportunities for turning such and such a statute into a topic of conversation with his neighbours, and with his friends? Will not every master of a family be disposed to expatiate and insist in the hearing of his servants upon some point or other which has struck his own mind forcibly, or is connected with the bad propensities he has observed in those around him? Will not every parent be anxious to communicate to his children such instruction, and such warning, as may save them from infamy, from a dungeon, or from a violent death?

Pertinent and salutary topics never can be wanting to those enlightened men who might be employed in preparing that religious discourse, which, by the command of Diocesans, ought to accompany the public reading of the laws. With deference to my superiors, I will take the liberty of mentioning one general principle, which it might be useful to illustrate and to enforce upon such an occasion.

I enter not into the political objections which a skilful disputant, by putting extreme cases, might successfully urge against the unqualified application of Bishop Berkeley's doctrine upon the duty of submission to government.* But I am sure that the moral distinction which he points out between commands and prohibitions,† cannot be too frequently stated, nor too ear-

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* See Bishop Berkeley's argumentative Sermon upon Romans, chap xiii. ver. 2, entitled, The Christian Doctrine of not resisting the Supreme Power proved and vindicated upon the Principles of the Law of Nature. In the life of this excellent prelate, published in London in 1784, it is said that "in 1712 the principles inculcated in Mr. Locke's Two Treatises of Government seemed to have turned his attention to the doctrine of passive obedience; in support of which he printed the substance of three Common-places delivered by him that year in the College Chapel, a work which afterwards had nearly done him some injury in his fortune."

† I know not whether Bishop Berkeley had read Jeremy Taylor. Where Taylor is examining those laws of nature with

nestly enforced. I add, that upon clear and sound principles of analogy much of his reasoning may be transferred from divine to

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which the Deity can dispense, he writes thus: "If all can be dispensed with, the consequents will be intolerable: if not all, by what are they to be separated, since they all seem to be established by the bonds of eternal reason? Some say that the precepts of the second table are dispensible, but not the first. But that is uncertain, or rather certainly false, for, if God did please, he might be worshipped by the interposition of an image; or if he essentially should hate that, as indeed in many periods of the world he hath severely forbidden it, yet the second commandment, and the fourth, have suffered alteration, and in some parts of them are extinguished. Others say that the negative precepts are indispensible, but not the affirmative. But this is not true; not only because every negative is complicated with an affirmative, and every affirmative hath a negative in the arms of it, but because all the precepts of the second table, the first only excepted, are negative, and yet God can dispense with all of them, as I have already proved." (Taylor, book ii. chap. 1.)

Taylor in this place confines the power of dispensing either with the affirmative or the negative laws of nature to the Deity, and therefore he supplies no rule for human action, except in those extraordinary cases in which the Divine will is communicated to us by express revelation. But in another part of his work, "On the Interpretation and Obligation of Christian Laws," he states very clearly, and urges very forcibly, the distinction for which I contend, between affirmative and negative precepts for the conduct of life. See book ii. chapter 3, where he shews "how far in negative precepts the affirmative are commanded, and in affirmative commandments the negative are included. Every negative does not presently infer every contrary affirmative as a matter of duty. From a negative an affirmative is not always inferred in a particular instance. From a negative law the affirmative is drawn, but not with the same degree of duty or necessity, because negligence in sins of omission is not so bad as malice; but in sins of commission the cause is always positive, and therefore always intolerable. The affirmative which is inferred by the negative law of Christ is not absolute and unlimited, like a negative, but modificated and limited by its proper and extrinsic measures. To this purpose is that known rule, that negative precepts oblige always, and to an actual obedience in all times. But affirmatives, though they always oblige, yet they can be obeyed but in their own season. So that although every negative precept is infinite and hath no limit, yet the affirmative have extrinsic measures and positions of their own,

human laws—those I mean in which certain actions are forbidden, and certain penalties denounced against the commission of them.

Commands admit many gradations of obedience. They sometimes depend upon external circumstances of opportunity, time, and place. They sometimes are, and from the nature of human affairs must be, left to the discretion of moral agents. They sometimes require such self-denial, or such magnanimity, as falls to the lot of few. They sometimes may be unobserved without positive mischief to society, or very heinous guilt in the offender. But comparatively few are the distinctions which can be applied to prohibitions. Thou shalt not steal—Thou shalt not bear false witness—Thou shalt do no murder—These are plain and peremptory rules, from which every deviation is declared to be criminal by the laws of God; and surely, when the laws of man interdict any action, it is of the highest moment to inform every subject from whom obedience is required, that every violation will expose him to some punishment; and in order to make the general impression more distinct, more lively, and more permanent, it must be of great use to inform him, yet farther, that to this or that kind and degree of violation, this or that kind and degree of punishment has been affixed by the authority of the legislature. The evil of ignorance may in many instances be great; but the remedy for it is obvious and easy. One short sentence, or even one member of a sentence, judiciously inserted, may suffice to point out to a fellow-creature the first approach to danger, and to rescue him from the snares of temptations hitherto

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something to make them laws to me and you, though the consequence of the negative is sufficient to make them to be laws to all mankind. So that although negative precepts may be mother of affirmatives, yet the child is a dwarf, and not like the mother, and besides that, it is exposed to be pursued by chance, and by circumstances, by strangers, and all the measures of contingency." (Book ii. chap. 3.)

It is plain, that Taylor and Berkeley agreed in their general principles. If the opinions of Taylor were extricated from scholastic phraseology, and brought home to the apprehension and the conscience of a common audience, they might be introduced with great propriety in a discourse upon the authority of human laws enforced by the sanction of human punishments.

unknown to him by his experience, or hitherto unresisted by him in thought. To discern all the allowances which are to be made for ignorance is the peculiar privilege of a divine legislator. But it is the bounden duty of every human legislator to take the utmost possible care that no man whatsoever remain ignorant of that which they require him to avoid, and that which they have doomed him to suffer.

Though it be very useful to show men the path which has been prescribed for them by written laws, the work, I grant, would be done imperfectly, unless they be farther protected from other dangers, which may spring upon them from the ambuscades of interpretation.

"In the original and natural sense of the word interpretation," says Bentham, "every man not only has a right to interpret the law, but is forced to do so, in as far as he is bound to square his conduct by it. In the technical sense, if the right of interpreting the law belongs to any man, that man is a legislator, and a legislator of equal authority with him that made it."* Now when controversies arise in the interpretation of written penal laws, they arise, as Paley says,† "upon contingencies which the composer of the law did not foresee," or, I would add, upon ambiguities in the phraseology which cannot be adjusted without great sagacity, and "a memory stored with long-collected erudition." The liberty then "of applying the law, which is unavoidably in such cases assigned to Judges, and which falls very little short of the power of making it, carries with it an authority which appertains not only to the conclusions which the court delivers, but to the principles and arguments upon which they are built." I believe, that English Judges generally do look beyond the case before them, and reflect whether the principles, maxims, and reasonings which they adopt and authorize, can be applied with safety to all cases which admit of a comparison with the present. The decision of a Judge may be wise and equitable, and being once made, it will necessarily have the force of precedent in the trial of future offenders. But as the bulk of mankind cannot be supposed to understand our penal

* See Observations on the Draught of a Code, &c. page 19.
† Chap. 8.

law in the sense which had not been previously affixed to it by the judges themselves, I think it very unjust that an offender who stands condemned in the first instance of interpretation should suffer death. Though the mens mala by which he was actuated may be evident, yet he cannot be accused of having intentionally violated a law which in truth was not understood by himself, or by other men. But I fear that upon some occasions the moral malignity of the offence has exposed the criminal to the most rigorous consequence of legal interpretations, unknown before even in our courts. As the interpretations of which I am speaking have, and ought to have, the force of statutes, it were well if the substance of them were compressed into clear and correct language, incorporated with the abstract of our penal code, and announced publicly in every parochial church. But who, it may be asked, is to be employed in supplying that language? Clerks in office are not easily weaned from their fondness for the tedious tautologies, and crabbed phrases, which pedants impertinently contrast with laconic conciseness, and attic elegance. Attorney Generals are too keen in the chace of their nobler game among the enemies of the State to waste their skill in the petty and inglorious toils "τῆς ἀωαγρίας." Learned and stately Judges, though in the cause of humanity they might deign to exercise the authority of critics, can not be expected to stoop to the drudgery of becoming epitomists. The case, however, is not quite hopeless. Let a man gifted with sound sense and a tolerable degree of patience stand at the elbow of a good lawyer, who is not very supercilious nor very pertinacious,

"Verbaque provisam rem non invita sequentur."*

Is it possible that statutes for the infliction of death could pass with the rapidity which we have sometimes witnessed, if every legislator, laying his hand on his heart, were to reflect on the sound and solemn language of Blackstone? "To shed the blood of our fellow-creatures," says he, "is a matter that requires the greatest deliberation, and the fullest conviction of our own authority; for life is the immediate gift of God to man; which

* Hor. de Art. Poet.

neither he can resign, nor can it be taken from him, unless by the command or permission of Him who gave it, either expressly revealed, or collected from the laws of nature or society by clear and indisputable demonstration."*

Yet it were an insult upon the national character to suppose that our legislature either enacts severe laws, or abstains from the discussion of those which ought to be repealed, in consequence of deliberate or habitual inhumanity. But their inattention is much to be deplored. When laws either for the extension of power, or for the preservation of liberty, are proposed, ambition or patriotism rouses the attention of speakers and hearers, parties stand in array against parties, and the merits of measures are discussed with ardour and precision. But if the repeal of a penal statute be recommended, the timorous shrink, the lazy retire, and they who reflect or feel are sometimes borne down by trite maxims, which are utterly inapplicable to the question—or by pompous harangues upon the excellence of the constitution, which neither directly nor indirectly would be injured by a favourable result—or by tedious details upon the remedial properties of capital punishment, while the evil which it involves in the destruction of individuals, or by the example of barbarity it affords, are under-rated, and while the instances† in which it fails for the purposes of prevention are overlooked.‡

He must be a negligent observer of human life who supposes that the superstition of man is confined to regulations which respect religion. The reasoning of Cato upon such regulations may be applied to other subjects. "Ubi legum nomen prætenditur erroribus, subit animum timor, ne pœnis, quæ iniquiæ sint, levandis sani juris aliquid immixtum violemus."§ Upon such occasions we seldom fail to meet with well-meaning objec-

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* Book iv. chap. 1. † Beccaria.

‡ After all that has been written on the want of efficacy and the want of proportion in our laws, it is most unreasonable for objectors to the revisal of them to talk "de causis incertis, eoque difficilioribus remediis." Let the experiment be made. "Nullus contentioni locus est in eo consilio quod non potest laudari nisi peractum."—Tacit. Hist. lib. i. parag. 10 and 7.

§ Liv. lib. xxxix. par. 16.

tors whom, like Cato, "oratores non solum graves, sed interdum etiam truces esse scimus omnes, cum ingenio mites sint." *

In legislation, as in all the other important concerns of social life, I know "bona consilia mora valescere," † and doubtless, if men could be trusted for perseverance in the pursuit of real good, for readiness to embrace every real opportunity of obtaining it, and for solicitude to distinguish between real and artificial difficulties, the exclusion even of seeming precipitation in the amendment of our laws would be a most valuable advantage. There is, however, little danger of such precipitation among ourselves, because the public sentiment and the public language of our countrymen have been long in favour of great and numerous changes in our penal system, and because the task of deliberating on such changes and preparing them for the view of Parliament would, in all probability, be committed to men of great observation, great sense, great honour, and great humanity.

Speaking of other countries and other times, Beccaria has eloquently described, "that difficult and terrible passage from error to truth, from darkness to light, when the violent shock between a mass of errors useful to the few and powerful, and the truths so important to the many and the weak, with the fermentation of passions excited by the occasion, were productive of infinite evils to unhappy mortals." ‡ But have we much to dread from such a shock? Can it be denied that upon the propriety, and I had almost said the necessity, of revising our penal code, persons distinguished by science and good sense, by patriotism and loyalty, are alike accustomed to pour forth the most serious complaints in their writings and their conversation? Yet men, and I fear classes of men, may be found among us, not only unwilling, as I have already said, to investigate, but ununwearied in their endeavours to repress investigation: and to those who look deeply into the latent influence of prejudice, habit, pride, and all the unsocial affections which are the usual attendants of pride, it is not difficult to discover the cause of this long-continued and much-lamented opposition.

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* Liv. lib. xxxiv. par. 5.

† Tacit. Hist. lib. i. par. 7.

‡ Cap. 42.

The repeal of the infernal statute de hæretico comburendo, in the time of Charles II. and a few other instances of repeal in succeeding reigns, are events which every benevolent man will contemplate with satisfaction. But in my mind they amount to a very scanty compensation for the extension and enactment of penal laws, which, in accommodation to the commercial interests and the commercial spirit of the country, have been strangely multiplied, and by which old and new felonies are consigned to goodly correction from a personage who, by the courtesy of Plato, has more than once been called "ὁ ἄνθρωπος."* "But what," exclaims Beccaria, "are the natural sentiments of every person concerning the punishment of death? We may read them in the contempt and indignation with which every one looks on the executioner,† who is nevertheless an in-

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* Phædo, parag. 65, et alibi, in Forster's edition.

† "By the laws of the Romans," says Mr. Eden, p. 327, "the executioner was forbidden not only to appear in the forum, but even to have any habitation in the city, and this was enacted that the minds of the people might not be familiarized to the idea of capital executions." He quotes from Cicero, in his speech pro Rabirio, the following words: "Carnificem non modo foro, sed etiam cœlo hoc ac spiritu censoriæ leges, atque urbis domicilio carere voluerunt." I have heard that under the late French monarchy the bourreau was compelled to wear his sword on the right-hand side, as a mark of ignominious distinction.

"In moderate governments," says Montesquieu, "a good legislator may make use of every thing by way of punishment." —Book vi. chap. 9. But he can do more. While he takes care not to violate our natural sentiments of justice and humanity, he can infuse a greater portion of infamy into any punishment without increasing bodily pain. He might employ the sabre, not the axe, in the execution of murderers, and Englishmen, like the Jews of old, might gradually be brought to think "pœnam gladii esse turpissimam."—See Fabricii, Bibliothec. Antiq. cap. 15. My readers may in the fourteenth and fifteenth paragraphs of this chapter find a catalogue of the authors who have written on the different kinds of punishment employed by governments antient and modern. They who wish for information de carnificibus veterum would do well to consult cap. 43, vol. i. of Falster's Amœnitates Philologicæ. If it be asked why I so often refer to writers upon Crimes and Punishments, my answer is, that not belonging to the profession of the Law, I am

nocent executor of the public will; a good citizen, who contributes to the advantage of society; the instrument of the general security within, as good soldiers are without. What then is the origin of this contradiction? Why is this sentiment of mankind indelible to the scandal of reason? It is that in a secret corner of the mind, in which the original impressions of nature are still preserved, men discover a sentiment which tells them that their lives are not lawfully in the power of any one, but of that necessity only which with its iron sceptre rules the universe."*

"To vindicate the multiplicity† of capital offences which the

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unwilling deservedly to expose myself to any contemptuous question, similar to that which a person who had been talking confidently de rebus cœlestibus once provoked from Diogenes, "Ποσταῖος πάρει ἀπὸ τοῦ οὐρανοῦ."—Diog. Laertius, lib. vi.

* Cap. 28.

† "In the Lent Circuit of England no less than two hundred and eighty-six persons were capitally convicted in 1786, and the annual amount of those transported is from nine hundred and sixty to a thousand.

"It is needless to make observations on these striking facts, which prove conclusively that the severity of the laws, instead of preventing, is frequently the cause of crimes. The humanity of mankind revolts at the strict execution of them, and the hopes of impunity become a source of temptation. To this Mr. Howard, among others, traces the mischief: 'and yet,' he adds, 'many are brought by it to an untimely end, who might have been made useful to the State.'—Laz. 221. No one will deny the justice of this last observation, when they learn from the mouth of the Solicitor General of England, 'That of those who are executed eighteen out of twenty do not exceed twenty years of age.'—18 Parl. Reg. 22.

"It is difficult to conceive how a free, humane, and generous people should so long have endured this weak and barbarous policy."—Bradford's Enquiry how far the Punishment of Death is necessary in Pennsylvania, p. 61.

The work from which the foregoing quotation is taken, abounds with important observations upon jurisprudence, and is written with great elegance of style. Mr. Bradford had for many years holden the place of Attorney General in Pennsylvania, and was called by Washington to fill the office of Attorney General for the United States. His well-meant and well-directed labours were not without effect in America. The different form of government, and the different interests and manners of society,

laws of England are accused of maintaining beyond those of other countries," Dr. Paley thinks it "sufficient to vindicate the lenity of the laws, that some instances are to be found in each class of capital punishment which require the restraint of capital punishment, that this restraint cannot be applied without subjecting the whole class to the same condemnation; that these laws were never meant to be carried into indiscriminate execution, and that the legislature, when it establishes its last and highest sanctions, trusts to the benignity of the Crown to relax their severity as often as circumstances appear to palliate the offence, or even as often as those circumstances of aggravation are wanting which rendered this rigorous interposition necessary." * I do not know that in any European State laws inflicting death are intended to be indiscriminately executed. I do know that under governments less mixed than our own "clemency," according to Montesquieu,† "is the characteristic of monarchs, and that, however easier it may be to feel than to describe when it is proper to punish, and when to pardon, dangers from the exercise of clemency," if great and real, "are visible." Far be it from me to intercept the mercy which among ourselves flows from the Throne. But the frequent necessity of exercising that which is called mercy, has induced many men to suspect, that what is called justice in the laws sometimes deserves another name. If the proportion between those who suffer after condemnation, and those who are spared, were very great, we should no longer endure the laws.‡ If it be, as Dr.

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may require some caution in the application of his principles to the English laws. But his book deserves very serious attention from every person who laments the severity of those laws, and who may hereafter be engaged in the amendment of them.

* Chap. ix. † Book vi. chap. 21.

‡ Of ninety persons who in the space of twenty-three years were convicted at the Old Bailey, previous to 1771, there were but twenty-two executed, which is less than a fourth. See Janson's Tables, and Bradford, page 62. But in other years the catalogue of sufferers is more dreadful. From the Tables in Howard's State of Prisons we learn that, "at the different Assizes within the Oxford Circuit, for seven years from 1764, six hundred and ninety persons were tried, and six hundred and fifteen

Paley justly describes it, very small, we shall find it difficult to justify the laws, as they now stand. The spirit of juries, the spirit of judges, the spirit of the people, and the spirit of their

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acquitted; besides two hundred and ninety-three discharged by proclamation. Within the Home Circuit, from 1764 to 1770 inclusive, one hundred and fifty-nine burnt in the hand, ninety-six whipped, and three hundred and eighty-six acquitted. In the Norfolk Circuit, from 1750 to 1772, four hundred and thirty-four condemned to death, and only one hundred and seventeen executed. In the same space of time, for the Midland Circuit, five hundred and eighteen condemned to death, and one hundred and sixteen executed. And at the Old Bailey, London, from 1749 to 1771 inclusive, one thousand one hundred and twenty-one sentenced to die, and six hundred and seventy-eight executed.—This note is taken from page 78 of a Visit to the Philadelphia Prison.

"Government," says Mr. Bradford, page 13, "is an experimental science: and a series of well-established facts in our state is the best source of rational induction for us." Mr. Bradford has given us a Table exhibiting a view of the number of persons convicted of all capital and certain other crimes in Pennsylvania, from 1779 to 1792. In a work on the Prisons of Philadelphia, published in January 1796, there is a Table of Convicts from January 1787 to March 1795. In the Appendix to Mr. Turnbull's book, called, A Visit to the Philadelphia Prison, there is one table of punishments for several heinous offences, as established by the laws of Pennsylvania, and another of offences committed in the city and county of Philadelphia, from January 1, 1787, to June 1791, being a period of the last four years and five months under the old criminal system. In page 266 of volume sixth of Liancourt's Voyage des Etats-Unis D'Amerique, fait en 1795, 1796, et 1797, there is a Tableau du nombre et de l'espèce des Convicts pendant les quatre dernières années de l'ancien systême, et les quatre premières du nouveau. I am acquainted with no other tables of English convicts except Jansen's, published in Howard's Lazarettos. If our penal code should ever be reformed, I am sure that it will be thought right to ascertain the effects of the measure by well-constructed tables; and the perspicuity and precision of those which have appeared in America furnish us with excellent models. The reformation itself would be facilitated, if tables were prepared of convictions at Quarter Sessions and Assizes in every county, of executions, of pardons, of commuted punishments, and of the offences committed after the expiration of long imprisonment or exile, from the restoration of Charles II. or at least the accession of Wil-

prince, are doubtless on the side of lenity. But if we look into the penal code itself, what do we read in almost every page?

"I, LICTOR, COLLIGA MANUS—CAPUT OBNUBITO — ARBORI INFELICI SUSPENDITO."*

Such, in this country, the land of arts, of freedom, and of a pure and reformed religion, such, I say, is the "lex horrendi carminis"† against more than a hundred and seventy offences.‡ But what, I ask, before earth and heaven—what is the language of common sense, of philosophy, of humanity, of religion, to a judge who should avowedly endeavour to enforce

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liam III. to the present time. Conspicuous would be the figure of a certain annus mirabilis between 1780 and 1790. "Then stood up" common sense, "and prayed," and in some quarters "the plague ceased."

They who have read Goldsmith's Citizen of the World will not think unfavourably of him as an observer upon national manners. The rigours of our penal code, and the effects of it, did not escape his notice. "I cannot tell," says he, "whether it is from the number of our penal laws, or the licentiousness of our people, that this country should show more convicts in a year than half of the dominions of Europe united." Mr. Bradford, who quotes the foregoing passage from Goldsmith's Chinese Philosopher, adds, "Wendeborn, an intelligent German, who resided some time in England, assures us that the punishment of death is more frequently inflicted in England than in all Europe together, in the same space of time."—Bradford, page 60. I lately read in one of our newspapers, that the King of Sweden, after bestowing high praise upon the constitution of England, the virtues of its Sovereign, and the bravery, loyalty, and magnanimity of the people, expressed deep concern upon the severity of our penal laws. The opinions of foreigners, and especially of monarchs, upon this subject, are more likely to be correct and impartial, than the judgment they pass upon political measures or political principles.

* Vide Orat. pro C. Rabinio, par. 2.

† Vide Liv. lib. i. parag. 26.

‡ Since the statement made by Blackstone, the number of capital crimes seems to have increased, for in 1786 Capel Lofft, as quoted by Jebb on Prisons (page 96), states them as follows: "Felonies without clergy, one hundred and seventy-six; felonies with clergy, sixty-five." The number has since increased by punishments for mayhem and forgery.

such a system with undistinguishing and unabated rigour? It was written upon the tablet which an upright and intrepid favourite sent to his Imperial Master presiding in a Roman tribunal,

"SURGE TANDEM CARNUFEX." *

I have been present when English Judges † sitting on the bench, took occasion to mention the number of capital crimes; and it required little penetration to discern that with all their rooted sense of official duty and decorum, and all their humane solicitude to warn the surrounding multitude, they were inwardly not quite at ease with some provisions in the laws which they were authorised to administer, and of which they sufficiently understood the original grounds, and the practical effects. I have, also, now and then witnessed very slight emotions of sorrow from the "dreadful notes" of a sentence, which, if it had been pronounced by my own lips, would have tortured my mind, as it is now formed, with anguish unutterable, and the recollection of which would have disturbed my slumbers for days, and months, and years. But it may sometimes be unfair to set up our own

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* Vid. Dio Cassius, lib. lv. par. 7.

† With the general conduct of our own Judges let us contrast what we read of the Scotch Judges, when "employed in the persecution of Congall and his intrepid followers. The effect of this heroic constancy upon the minds of their oppressors, was to persuade them not to lessen the number of executions, but to render them more private, whereby they exposed the true character of their government, which was not severity, but violence; not justice, but vengeance; for example being the only legitimate end of punishment, where that is likely to encourage, not to deter (as the government in this case seems to have apprehended)," and "consequently to prove more pernicious than salutary, every punishment inflicted by the magistrate is cruelty—every execution, murder."—Mr. Fox's History of James the Second, chap. 2. page 117.

I have already expressed my disapprobation of capital punishments inflicted in private; and they are more especially to be dreaded in real or pretended offences against the state. I repeat, what I before said, that the cases in which even a lighter punishment might be privately inflicted, must be very few. The offence should not be heinous, and the sense of shame in the sufferer is to be spared, lest he become hardened.

opinions and feelings as the measures of right to other men, and it is always dangerous to assume, that in situations hitherto untried, we should ourselves be superior to other men in circumspection, or philanthropy. If a larger portion of mildness were infused into the laws themselves by the interposition of the legislature, there would be less room for sternness in the judge, or dissatisfaction in the observer.

In the administration of the civil code there is often little scope for compromise between the contending parties. What one gains the other must lose. "That," says Hale, "which preserves the rights and property of one man, may and must thwart what another mistatingly thinks his right." * But some rule or other governs the decision, and the property remains in the state, though the proprietors be changed. The regulation of the conditions on which it is claimed may often be attended with great difficulties, and therefore in the mixed and fluctuating state of human affairs there must be great danger in very sudden and violent alterations, to which the opinions and the pursuits of men could not be easily accommodated. But the reformation of the penal code does not seem liable to similar objections. Punishments may be mitigated, but not abolished. The offender must still be doomed to suffer, and if the laws make his sufferings in general opinion proportionate to his offence, he will have less to hope from the ill-directed pity of those by whom he is to be tried, and he will have more to fear from their well-directed sense of justice.

As nations become more populous, and more civilized, fresh difficulties in the administration of their civil code will inevitably arise from the diversified modifications of property, and the multiplied collisions of interest. But I believe that with our own growing population the number of offenders against penal laws will not be found to be much increased, and after long inquiry I am convinced that the malignity of their offences has been gradually diminished by the progress of civilization, that men are less accustomed to lurk in solitary recesses, that they are less able to form and execute their plots in armed confederacies, and less

* Cap. 2, on the Amendment of the Laws.

disposed to add sanguinary violence to open robbery. The class of those who violate the laws made for the protection of the public revenue is, perhaps, somewhat more numerous. But the laws themselves have increased in number and severity, and I shudder at the recollection of some instances in which they have been executed with a degree of rigour not very honourable to a free and a Christian country. Such laws, with such tremendous penalties, ought to be passed with the utmost circumspection and reluctance, because it is possible that the fleeting interests or the corrupt views of statesmen will have a most undue influence upon the execution of them, and because the fountain of mercy, which is open to other and more depraved wretches, may sometimes be shut against the criminals of whom I have been speaking.

Mr. Bentham, when pointing out the mischiefs resulting from the unpopularity of a punishment, properly observes, that "nations are liable to have their prejudices and their caprices, which it is the business of the legislator to study and to cure,—that even the unmerited want of popularity introduces weakness into the law, when the people being dissatisfied with it withhold their assistance in the execution of it,—and therefore, that it is the duty of the legislator to correct their unreasonable dislike, and to give them such instruction as may prevent them from quarrelling with their own interest." * But the laws to which I advert owe their want of popularity to the excess of their rigour, and it is utterly impossible to defend them upon any principle of utility. "For it is a false idea of utility which, sacrificing things to names, separates the public good from that of individuals." †

It required an effort from me to believe that I was treading on the soil of England, when the fate of a person who some time ago had violated one of our modern statutes, was first made known to me. The evidence upon his case, I thought, was clear —the judge and jury were impartial—the sentence, after much discussion, proved to be legal. But the law itself is very harsh. The violation of it gives no great shock to our moral feelings, and to prevent the crime forbidden in it by death, seems to set

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* Vid. cap. 15. † Beccaria, chap. 40.

political reasons at variance with our common apprehensions of justice. As to certain persons, who from their official situations might without impropriety have advised the mitigation of the punishment to a first offender, it is quite impossible for me upon this occasion to commend them as ministers, or to esteem them as men. But I confidently looked for better things from one statesman, who in genius and magnanimity towered above all his colleagues, and who has since been summoned before the tribunal of that Being, who "hath no respect of persons," and "who turneth" not "judgment into wormwood and gall."

Eagerly, however, do I seize this opportunity of paying a public and grateful testimony to the memory of the illustrious person to whom I just now alluded.* Disregarding the difference of our political sentiments, he at my request gave the fullest effect to my exertions for saving an unfortunate person who had committed the crime for which he was on the point of suffering death, but was guiltless of some aggravations hastily imputed to him; and who by the diligence, sobriety, and honesty which he has uniformly manifested for the space of twenty-five years from the time of his deliverance, has fully justified the opinion I had formed of him, and amply repaid to society the mercy shewn to him by the executive government.

If I had not known the want of caution (for I will not call it the want of humanity,) which sometimes steals upon the minds even of legislators, I should have supposed that some of my countrymen had come fresh from their studies in the laws of Japan,† where almost every offence is punished with death, because it is an offence against the great emperor, or that they had been seized at the moment with the fanaticism of the Stoics: "Horum sententiæ sunt ejusmodi; viri esse neque exorari neque placari; neminem misericordem esse, nisi stultum, et levem; omne delictum scelus esse nefarium, nec minus delinquere eum, qui, cum lex Cornelia nummaria vetuerit, pictas chartas dolo malo insigniverit, quam eum, qui latro aut sicarius fuerit." ‡

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* Lord Rosslyn.

† Vide Montesquieu, book vi. cap. 18.

‡ Vid. Cicero, Orat. pro Muræna, and Horat. lib. i. sat. 4.

Hard upon some occasions seems to be the lot of frail man, beset upon one side by the moralist with his notions of guilt, and on the other by the politician with his solicitude for prevention. Are the most natural and salutary feelings of the heart wounded, as in cases of murder and aggravated robbery? "Let the offender be cut off," exclaim both the moralist and politician, for different reasons, it should seem, but with the same effect. Are those feelings languid, as in other cases they sometimes appear to be? "Let the defect of their vigour be supplied," says the politician, "and let us look for that supply where we are sure of finding it, in capital punishments." To the legislator who reasons thus, I should calmly reply, "In the present state of things * I accede to

* I say the present state of things, because it is conceivable that even in our own country, capital punishment may at some distant period be abolished. I presume not to decide the awful question, "Has the legislature a right to enforce its own laws by the death of the transgressor?" Blackstone (cap. 1. lib. iv.) says, that "persons of some abilities have doubted it;" and I know men of very great abilities, who entertain the same doubt. The horror of the human mind at murder is just and universal, and we read of the wise and humane Solon, "*τοὺς Δράκοντος νόμους ἀνεῖλε, πλὴν τῶν φονικῶν ἅπαντας.*"—Vid. Plutarch. in Vit. Solon, vol. i. p. 87. edit. Xyland. Now the purposes of example among ourselves may sometimes require the punishment of a murderer by death. But the principle of incorrigibleness in the offender is certainly not the ground of his punishment. "Murder is not an habitual crime, as theft is, and consequently the amendment of the guilty is a subject of more reasonable hope."—See page 35 of Observations on the Prisons of Philadelphia, by an European. "Murder," says Mr. Bradford, "in its highest degree has generally been punished with death, and it is for deliberate assassination, if in any case, that this punishment will be justifiable and useful." (page 35.) "When we consider," says the same writer (p. 38), "how different in their degrees of guilt offences held to be murder, are from the horrid crime of deliberate assassination, it is difficult to suppress a wish that some distinctions were made in favour of homicides which do not announce extreme depravity." In that wish I sincerely sympathise, and I fear, too, that the distinctions made by the English laws are too obscure and too few. But to the list of capital offences proposed by Mr. Bradford, surely without any violation of humanity we might add wilful and premeditated parricide—private poisoning, where the evidence of the fact is very clear, and where

your first principle generally, and even in the second I might, under some circumstances, acquiesce to any extent that does not

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the causes of death are ascertained before the court by the testimony, not of village surgeons and apothecaries, but of two or more physicians, eminent for science and experience—murder, connected with burglary, or robbery by night—and high treason, when the laws upon this subject are completely disencumbered from such a mass of intricate and oppressive constructions as makes it impossible for the bulk of English subjects to understand the statutes which, under the penalties of death in its most tremendous form, and of confiscation, they are now required to obey.

I have long thought with Mr. Bradford, that murder in judicial construction is a term "too broad and comprehensive," and that in the laws of William Penn the words "wilful and premeditated" murder were wisely substituted for the technical phrase, "malice aforethought." If the penal code of England should be revised, I hope that this subject beyond all others will be seriously and strictly examined, and especially that part of it which inflicts death for child-murder. The reluctance of English juries to condemn persons accused of that crime, is a proof that some alteration may be made with safety. Child-murder in Scotland is, I am told, not punished in the first instance with death. "In Denmark, (Vid. Bradford, p. 40.) women guilty of child-murder are no longer punished with death; but are condemned to work in spin-houses for life, and to be whipped annually, on the day when, and the spot where, the crime was committed." "This mode of punishment," Mr. Howard assures us, (Howard on Prisons, page 74,) "is dreaded more than death, and since it has been adopted has greatly prevented the frequency of the crime."

"An attempt was made to introduce a similar alteration in the laws of Sweden. It was recommended by Gustavus III. in his speech at the opening of the Diet of 1786. But this innovation was warmly opposed by the clergy; and the patriots to whose consideration it was referred, were unanimous in advising the representatives of the nation to continue the punishment of death." The heinousness of murder is recognised even in countries where the penal code has been corrected. Murder, in the first degree, is now a capital offence in America; and in Russia, pain more terrible than death, both to the spectator and the sufferer, is employed to mark the punishment. I presume not to point out any regulations in the English legislature. But I hope to be excused for remarking, that one circumstance in our punishment of murderers has always appeared to me exceptionable. As the

amount to death. Est locus sententiæ per quam neque improbis hominibus delictum impune sit, et nos clementiæ simul ac

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proof of the crime often depends upon circumstantial evidence, and as that evidence from its very nature must be in some degree doubtful, I never was satisfied with the execution of murderers within the space of forty-eight hours after their sentence. Surely speediness* has been confounded with certainty. If, after a time, which the wisdom of the legislature may prescribe either generally, or with express reference to particular kinds of proof, no facts favourable to the convicted party should be discovered, let him suffer judgment—let him perish on the spot where he offended—and let his execution be accompanied by peculiar solemnities.

God forbid that I should attempt to lessen our natural and salutary horror at the shedding of human blood. But in the sentiments of mankind towards the crime of murder, I have observed that a large portion of revenge is always mixed with moral disapprobation, and reflecting upon the indiscriminate eagerness of men to punish a murderer with death, I have found it resolving itself ultimately into the lex talionis, and accompanied of course with strange inequalities. An eye for an eye, a

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* In the Treatise de Specialibus Legibus, Philo says that the law forbad murderers by poison to live "a day or an hour after their sentence," —the secrecy of the deed, the number of persons whom it may affect when they are taking their food, and the possibility of committing it between condemnation and death, are the reasons which Philo gives for the speediness of punishment (vol. ii. pp. 315, 316, edit. Mangey). I think that the crime of poisoning, when it has been clearly proved, ought to be punished with some circumstance, which should mark the horrid nature of the act, though I should be sorry to see any re-enactment of the statute which passed in the reign of Henry VIII. and ordained that the "offender should be boiled to death in hot water;" which actually was carried into execution against Margaret Davy and some other persons, but on account of its severity was repealed by 1 Edw. VI. chap. 12, and 1 Mar. chap. 1. (See Dagge, vol. ii. p. 74.) I have great doubts, whether speediness be the most proper expedient for marking the crime even of poison; and it is to be observed that the English laws appoint speedy execution for every sort of murder. The law in this respect is not of a very ancient date, and when I consider the frequency of those cases in which sentence of death is passed upon merely circumstantial evidence against persons accused of murder, I think that speediness ought not to be indiscriminately employed.

severitatis non pœniteat."* But this summary way of proceeding by capital punishments, though it may assume the appear-

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tooth for a tooth, blood for blood, is rather the language of rage in an offended individual, than of deliberation in a wise legislator.

It is surprising to find Blackstone and other grave writers insisting upon that scriptural passage in which we read, "Whoso sheddeth man's blood, by man shall his blood be shed," and from which it has been inferred, that blood can only be expiated by blood. Mr. Turner, in the second volume of the Memoirs of the Literary and Philosophical Society of Manchester, considers the text as a prediction, not a law; and in an Inquiry into the effects of public Punishment, published in Philadelphia, it is said that "the language of it is simply, that such will be the depravity and folly of man, that murder in every age shall beget murder." (Page 15.) I accede not to either of these interpretations. The text and the context evidently suggest to us the notion of a precept, connected indeed with a prohibition to eat flesh with the life thereof, which is the blood thereof." The punishment extends to every beast which kills a man, as well as to every man who kills a fellow-creature. Rosenmuller, in his Scholia in Genesin, thus writes, on the passage which relates to beasts: "Volo, ita vos sanguinem animalium edendorum effundere, ut crudelitatem interim vitetis, ne earum carnem simul cum sanguine comedatis. Videtur hic utrumque includi, ne aut membrum ex animante adhuc viva palpitans, aut etiam sanguis adhuc palpitans edatur." "Quamquam poenae, quæ proprie dicuntur, in bruta non cadunt, tamen ea quodammodo poenas luunt, cum propter violatos homines occiduntur. Hoc autem Deus ideo dicit, ut significet, quantum ipse abhorreat humani sanguinis effusionem, propter quam ne bestiis quidem, ratione carentibus, parci velit." (Cap. ix. p. 102.) The text then says, "And surely your blood of your lives will I require; at the hand of every beast will I require it; and at the hand of man, at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man." (Genesis ix. 5. 6.) In the notes of Le Clerc there is much learned criticism on some of the Hebrew phrases, and a clear account of the arbitrary and absurd distinctions which the Jewish doctors have introduced between the judicial dispensations of Heaven, announced in verse 5, and human punishments pre-

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* Tacit. Annal. lib. iii. par. 11.

ance of vigilance and zeal in the public service, is in reality too well adapted to the indolence or the pride of men in making

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scribed in the next verse. Le Clerc has given the following explanation of the passage: "Bruta quidem, quorum dominium ad homines pertinet, occidere licebit; at hominem, qui ad instar Dei iis dominatur, et nemini nisi Deo absolutum omnibus numeris obsequium debet, temere interficere nefas." But where there is *nefas*, there must be punishment, and the punishment ordained here is evidently death. If, however, we maintain that death ought to be the punishment of bloodshed in consequence of this precept, are we at liberty to separate it from the other precepts about destroying the beast, and abstaining from blood,* though indeed, to the last interdict no special penalty is annexed? Are we not bounden (if at all) to follow the letter of the precept, which does not even hint a distinction between manslaughter and murder, in every case to shed the blood of him by whom man's blood has been voluntarily shed? If discretionary interpretation is to be admitted, what are its limits or its rules? Is the precept imperative to Noah, and permissive only to us? Does the passage contain merely a proof to us by the example of the patriarchal age, that homicide may be punished with death, or an authoritative direction for us to imitate that example? The plain fact is, that from a precept intended for the use of Noah and his family, and adapted to a very imperfect form of society, no general rule can be drawn, which carries with it the force of obligation to a civilized community of Christians. Instead of contending for legal conclusions which the principles do not

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I believe the precept here given for abstaining from blood, to have been obligatory only in the Patriarchal ages. A similar injunction was, indeed, afterwards laid upon the Jews. We should remember, however, that not only a similar, but an additional reason is assigned for it.

"Levit. xvii. 11. The life of the flesh is in the blood, and I have given it to you upon the altar, to make an atonement for your souls; for it is the blood that maketh an atonement for the soul. Therefore I said unto the Children of Israel, no soul of you shall eat blood, &c. Here appears the reason of this strict and often repeated prohibition: blood was appointed for the atonement of sin; it was set apart and sanctified for that purpose; and consequently, when the use of the altar, and sacrifices ceased at the death of Christ, the prohibition of eating blood should cease also, and the precept in the Acts of the Apostles seems to have been prudential and temporary." (Jortin's Remarks on Ecclesiastical History, vol. i. p. 215.)

laws, which they are themselves under little temptation to violate. It presents itself readily to the coarsest understanding,

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clearly warrant, I should infer from the whole passage this moral lesson, that great tenderness is due to the life both of man and beast.

The capital punishment of murderers in England may be justifiable; but does not depend for its justification upon a passage to which writers on jurisprudence so often appeal. I am farther at a loss to see how the penal laws enacted even in later times by Moses, can have any direct authority in Christian countries, if we reflect upon the theocracy peculiar to the Jewish government, or upon the ignorance and barbarous manners of the people to whom those laws were originally given. "Severity," says Mr. Turnbull, "might be expedient for the government of the Jews, but the same policy cannot be said to suit nations whose manners have been meliorated by time, and the influence of the doctrines of the Prince of Peace. He gave us so many precepts of morality and forbearance, that none can assume the title of his followers, and retain at the same time practice and principles which in his divine mission he so directly forbids." (Page 86, of a Visit to the Philadelphia Prison, published in 1796.) Mr. Bradford, (page 21,) states some facts about a nameless, but most odious, and among ourselves, happily, a most rare crime, which always provokes just and fierce detestation, and which, in the opinion of many wise and virtuous men, it were better for the laws to restrain by the most indelible and dreadful marks of infamy, than, according to the directions of a statute which, was passed in the reign of an execrable tyrant, and perhaps was intended to facilitate his system of rapine, by holding up a certain much injured and much slandered class of his subjects to public hatred. "Those facts," says Mr. Bradford, "may teach us, like the capital punishments formerly inflicted on adultery and witchcraft, how dangerous it is rashly to adopt the Mosaical institutions. Laws might have been proper for a tribe of ardent barbarians, wandering through the sands of Arabia, which are wholly unfit for an enlightened people of civilized and gentle manners."

If Christianity itself is allowed to contain, not political regulations, but moral rules of conduct, why should legislators, as such, assign any authority to the Jewish laws in countries where the Mosaical religion never was established, and where the progress of men in civilization and knowledge, their social interests, their manners, their opinions, and their forms of government, are widely different from those of the Jews?

The communes intelligentiæ, which more or less influence the

and you fly to it with little reflection,* though upon a collective view of all the circumstances which ought to regulate your measure, it will be seen to require the greatest. You will find it difficult to persuade the mass of mankind, that in planting such terrible penalties around regulations of mere policy, you are act-

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moral sentiments of Jews, Christians, and indeed all men in a state of society, ought not to be confounded with the provisions which the Jewish Lawgiver expressly made for his own people, and for them only. "Even in that very people," says Hale, "although the text of the judicial law was that which was the basis and rule of their government and policy, yet the wisdom of Almighty God, even in the very giving of that law and divers times after, upon variety of emergencies, instituted a clause for the accommodation of things in the same state according to the exigence of things and emergencies, viz. the great council of that people, their Sanhedrim, and the governors of that people, their kings. Upon the whole, therefore, I conclude, that that law was contrived with most perfect wisdom for that people, and during that state; and therein consisted, in a great measure, the wisdom of it, in that accommodation. But to translate that law to another people, to whom it was not accommodate, were a wrong to the Divine wisdom."—Hale on the Amendment of the Laws, chap. 2.

* In page 138 I had occasion to quote a passage in which Johnson speaks of human laws, as "the last effort of human reason providing for human happiness." But to this general encomium he has himself supplied us with a principle of exception, when he tells us, "Laws are often occasional, often capricious, made "always by a few, sometimes by a single voice." (Idler, No. 11.) My general principles are, let laws be well considered, before they are enacted. Let them be enforced with firmness not wholly excluding mercy, while they are unrepealed. Let them be repealed, when they are experimentally found to be inefficacious, or oppressive, impracticable without public inconvenience, or unjustifiable without technical subtleties. Demosthenes denied in "eo positas esse fortunas Græciæ, huc, an illuc manum porrexerit." (Cicero, Orat. p. 157, vol. i. edit. Gruter.) I hold, that the life of the meanest citizen ought not to depend on the uncertain judgment of those, who can tie or loosen the "Juris nodos," and warp or straighten the "legum ænigmata," (See Juvenal, Sat. 8.) according to the minutest variations in circumstances, or the supposed exigencies of the times. I believe however, that no Judge now living would have decided, as Hale did at the Cambridge assizes, on the burglary I mentioned in page 174 note ‡.

ing for the public weal, rather than for purposes of your own personal ambition, or your own peculiar interests. You teach common minds to confound moral rectitude with political expediency. You shock virtuous men by an appearance of novel and wide disproportion between the offence and the penalty. You throw an air of artifice and austerity over those restraints which the judgment of civilized man cannot approve, and you run the hazard of weakening his general respect for the authority and equitableness of the laws. Is it quite safe for you to confess, that in appointing punishments you pay more regard to the efficacy of statutes required by the temporary exigencies of the state, than to the general spirit of your constitution, and the most amiable sympathies of human nature itself? May not such confession induce the offender to stand absolved in his own mind from the common laws of morality; and to calculate probable loss and probable gain when he is tempted to commit a crime, and ultimately "patrati malle, quam incepti facinoris reum esse?"* You may, it is true, find your way to his fears; but you lose every hold upon the remaining force of his conscience. You compel him to form and execute his plans with redoubled secrecy, and you enfeeble his sense of duty in all the private relations of social life. You may indeed crush him by your power. But this has been done on trifling provocations by other men, "qui cum reges sint, æquam rem non imperitant."† Do not suspect me of pleading for impunity to the rash persons of whom I am speaking. Take, if you please, very largely, but do not cast away all humanity when you are taking advantage of the well known and much abused maxim, "Nec quies civium sine armis, neque arma sine stipendiis, nec stipendia sine tributis haberi queunt."‡ Do not inflict the sharpest pain where it is impossible for you to awaken a natural, or even an artificial sentiment of shame.

Do not by any indirect sort of fiction introduce into your statutes the majestas imperii, and thus imitate the Roman Emperors, who not only commanded coiners and all their accom-

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* Tacit. Annal. lib. ii. par. 16.

† Horat. lib. ii. Sat. 3. ‡ Tacit. Hist. lib. iv. par. 74.

plices to be excluded from amnesties, and to be burned to death, but in the abundance of their financial zeal, subjected the proprietors of the land on which the offence was committed to banishment and the forfeiture of their estates. I do not entreat you to soften the rigour of the Laws which you make for the protection of taxation, by infusing into them a very abundant portion of the spirit which led Theodoric to order the Director General of his demesne to remit taxes themselves: "Illud amplius nostris utilitatibus applicamus, quod misericordi humanitati concedimus. Regnantis enim facultas tum fit ditior cum remittit, et acquirit nobiles thesauros famæ, neglecta utilitate pecuniæ."* But upon questions where the servants of the Crown and the peculiar interests of it readily present themselves to the mind, would there not, let me ask, be a peculiar propriety in attending to the preamble of a statute passed in the reign of Mary, where it tells us, "That the state of every King consists more assuredly in the love of the subjects towards the Prince, than in the dread of laws made with rigorous pain; and that laws made for the preservation of the commonwealth, without great penalties, are more often obeyed and kept than laws made with extreme punishments?"† The exigencies of the state may not suffer you to be generous. But do they require you to wield the uplifted scourge against any offender who by contrivances merely fraudulent diminishes the value of your revenues?

I forget not, as I wish you not to forget, that "many of our corruptions arise from the impunity of criminals, rather than the moderation of punishments."‡ Disappoint, then, if you please, the expectations of escape in this class of offenders, by relaxing the rules of evidence. Transfer to your statutes the principle which has been "so efficaciously employed against coining, and by which the possession of implements suited to the purpose was made evidence of guilt."§ Try if experience shews it to be necessary, many kinds and many degrees of painful punishment. But abstain from the infliction of death upon an of-

* Cassiod. Var. lib. i. cap. 6.

† See this Preamble, quoted by Blackstone, book v. cap. 1.

‡ Vid. Montesquieu, cap. 13. § Vid. Paley, cap. 9.

fence, which endangers not the peace of the community, which is not connected with their business, but their amusements, which renders "not the state of society unsettled, by a sense of personal insecurity," and which, after all your refinements, consists, and will appear to consist in fraud, without any actual or any possible mixture of violence. No enlightened inhabitant of a free and a Christian country will apply to such a punishment what was once said by C. Cassius, upon the punishment of Pedanius Secundus the Prefect: "Habet aliquid ex iniquo omne magnum exemplum, quod contra singulos utilitate publicâ rependitur."*

Theories, which, I confess, are not without their charms to my mind, when, like that of Beccaria, they breathe a spirit of pure and enlightened humanity, would never lead me to promote sudden and violent changes in the established usages of social life. I know that the love of our species ought to be adapted to the collective interests of those among whom and for whom we are doomed to act, and that in balancing those interests we have need of reason and experience as guides to our best affections in the pursuit of their proper ends, and as restraints upon our imaginations in the vivid conceptions of objects which are simple, or detached, or bulky and near. I am aware that some crimes extend their malignant effects far beyond the appearances which accompany immediate overt-acts, and therefore I would not, for the present, recommend to an English legislator the example of the Emperor Maurice, "who made a resolution never to spill the blood of his subjects;" or of Isaac Angelus, "who, forgetting that it was not for nothing that he was entrusted with the sword, took an oath that no man should be put to death during his reign."† But I do wish you to remember the questions which I have already quoted from Blackstone: "Is it found upon further experience, that capital punishments are more effectual? Was the vast territory of all the Russias worse regulated under the late Empress Elizabeth than under her more sanguinary predecessors? Is it now, under Catherine II., less civilized, less social, less secure? And

* Tacit. Annal. lib. xiv. par. 12.
† Montesquieu, lib. vi. chap. 21.

yet we are assured, that neither of these illustrious Princesses have, throughout their whole administration, inflicted the penalty of death; and the latter has, upon full persuasion of its being useless, nay, even pernicious, given orders for abolishing it entirely throughout her extensive dominions." * I should farther wish you to reflect on the wise and humane language of Grotius: "Neque abs re erit Christianis rectoribus, saltem ex parte aliqua, imitandum proponere exemplum Sabaconis Ægyptii regis pietatis nomine laudatissimi, a quo capitales pœnas in damnationem ad opus mutatas felicissimo successu narrat Diodorus. † Notat Balsamo leges Romanas quæ mortis pœnam irrogabant a posterioribus Imperatoribus Christianis mutatas plerasque in alia supplicia, quo et acrius damnatis inuretur pœnitentia, et magis ad exemplum proficeret pœna diuturnior." ‡

The commentator on Beccaria tell us, that "political sanguinary laws are temporary, because they are not founded in truth." § I hope to see the day when this observation can be so far applied to one of our statutes as to produce a repeal of that part by which death is now denounced, and has been once inflicted. When that day shall arrive, they who advised the law, and they who have executed it, may, with my approbation, take the full benefit of the plea which Machiavel supplies for a single instance of cruelty. "Recte crudelitatem adhibitam esse dici posset (si quod malum est, de eo quid boni pronunciari daretur) cum quis necessitate adactus semel tantum, quo securum se reddat, crudelitatem exercet; nec amplius in posterum in ea insistendum ducit, sed in subjectorum majorem utilitatem, utcunque fieri possit, commutat. Quæ autem perperam adhiberi dicitur, ea est quæ initio, etsi rara est, multiplicatur tamen temporis progressu citius, quam exstinguatur. Qui priorem rationem servandam judicabit, is tum penes Deum, tum homines, aliquid remedii, uti Agathocles, habere conceditur." ||

"When a question," says Blackstone, "arises, whether death may be lawfully inflicted for this or that transgression, the wis-

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* Blackstone, book iv. chap. 1.
† Diodorus, Sicul. lib. i. cap. 65.
‡ De Jure Pacis Belli, lib. ii. cap. 20. § Cap. 14.
|| Machiavelli Princeps, p. 45.

dom of the laws must decide it; and to this public judgment or decision all private judgments must submit." *

Be it so. Let "the subject be bound to receive the interpretations that are given by the sovereign power." But let those in whom the sovereign power resides remember, that the "guilt of blood, if any, must lie at the door of those who misinterpret the extent of their warrant." Let them consider in every country, that great must be that guilt, if in decreeing the summum supplicium they forget that "all punishment in itself is evil; that as the evil of crime is already past and irrevocable, punishment is both a spontaneous and additional evil; that, in order to answer the purposes of example, it usually involves much more evil than is contained in crimes; that it ought only to be admitted in as far as it promises to exclude some greater evil," and that no task can be more difficult, or more important, or more meritorious, than to determine well where "punishment is groundless—where it is inefficacious—where it is unprofitable—where it is needless" †—and, above all, where it is mischievous and odious, because excessive. In this land of freedom, more particularly, let them reflect on these most serious truths; that "excessive punishment, which corrupts even a despotic government, diffuses its malignant influence in a government which is free;" that "where the people do not observe the laws, the corruption is less dangerous than when they are corrupted by the laws," because the evil lies in the remedy itself; that "however cruel punishments, employed by violent governments to redress abuses, may seem for a time to put a stop to the evil, the imagination grows accustomed to the severe as well as the minor punishment; that where the minds of the people have been in any degree corrupted by too great severity of punishment, a wise legislator will, in particular cases which admit of indulgence, mitigate the punishment, till he shall be able to extend this mitigation to all cases: that absurd and brutal practices have in all ages been justified on the footing of pretended necessity,‡ and have received the sanction of

* Blackstone, book iv. chap. 1. † See Bentham, chap. 13.
‡ In many countries certain classes of severe laws have been

laws; that the essence of right and wrong does not depend on words and clauses in a code or statute book, much less upon the conclusions and explanations of lawyers, but upon reason and the nature of things, antecedent to all laws; that virtue itself is but perfect reason, and that an enlightened nation having reason for its guide, will never call for general assent, or urge any supposed necessity, in vindicating usurpations on the natural or social rights of mankind." *

Readily enough do we in our closets acknowledge the soundness and the importance of the foregoing principles; and if they were engraven upon our hearts, when we are called to the sacred duties of legislation, there would be less room for a remark, which the best and wisest of men have been compelled to apply to many regulations established in our own country, and to some, perhaps, introduced in our own age. "England," says Mr. Bradford, "contenting herself with the superior wisdom, humanity, and justice of her laws in all respects but one, and too fond of 'the ancient order of things,' has alone remained stationary. The nation, indeed, is fully sensible of the evil which attends a multitude of sanguinary laws, and the government itself begins to be alarmed with the magnitude of the mischief. Judge Blackstone was active in prosecuting a reform, and Lord Ashburton, it is said, was prevented by his death from bringing forward in Parliament a plan for that purpose." †

"I hold it," says Montesquieu, ‡ "to be an essential point that there should be a certain proportion in punishments, because it is essential that a great crime should be avoided rather than a small one, and that which is more pernicious to society, rather than that which is less." Hence he concludes "that some difference should be made between the punishment of a person who robs on the highway, and another who robs and murders."

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protected by the plea which was once adduced for false accusations, plunders of the wealthy, and other bad practices in the government of the Roman Emperors; "Quæ gravia atque intoleranda, sed necessitate armorum excusata, etiam in pace mansere." —Tacit. Hist. lib. ii. par. 24.

* See Montesquieu, book vi. chap. 12 and 13, and Dagge, chap. 5, sect. 1. † Page 51. ‡ Book iv. chap. 12.

Beccaria carries the difference to the utmost point when he maintains, that "the punishment of robbery, not accompanied with violence, should be either pecuniary, or that kind of slavery which makes society for a time absolute master of the person of the offender, and of his labour to repair his usurpation over the property of another, and that corporal punishments should be added to slavery, when robbery is attended with violence." *

No such distinction is made with us even in England, where our crown law, according to Blackstone, † "is supposed to be more nearly advanced to perfection than in other nations." It were easy, surely, to introduce into our statutes some distinction; to appoint death for robbery in the first instance, when it is aggravated by great violence, and to make simple robbery capital upon a third or fourth repetition. ‡

"It has been proposed," says Blackstone, § "that in every state a scale of crimes should be formed, with a corresponding scale of punishments, descending from the greatest to the lowest." But Beccaria himself, by whom this scale was suggested, does not seem to think that it could be applied with precision to the obscure and infinite combinations of human action. He places, indeed, in the first part, those crimes which immediately tend to the dissolution of society; in the lowest, those which do the smallest possible injustice to a private member of that society; and between these extremes he puts all actions contrary to the public good, and which descend by insensible degrees, de-

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* Chap. 22. † Book iv. chap. 4.

‡ Speaking of thieves who had been discharged, and had returned to their old vocation, Mr. Bradford observes: "of all offenders these are the most incorrigible. Other offences are seldom repeated; but a person once devoted to any species of theft is seldom reclaimed by any terrors he has undergone or any mercy he has received. Reformation, though not impossible, must be the work of much time."—Page 23. Mr. Bradford imputes these evils to the defects of the old system, and the frequency of pardons. "Those defects," he says, "were corrected by the system of 1790, the execution of which has been diligently attended to by the inspectors; and the prerogative of pardon, since it has resided in a single magistrate, is no longer weakly exercised."—Page 24.

§ Book iv. chap. 1.

creasing from the highest to the lowest. But he adds, that it will be sufficient for a wise legislator to mark the principal divisions, without disturbing the order, lest to crimes of the first degree be assigned punishments of the last." Blackstone, whose theoretic notions were perhaps corrected by practice, doubts whether a corresponding scale of punishments be not too romantic an idea. But he in effect agrees with Beccaria, when he says, that "a wise legislator will at least mark the principal divisions, and not assign punishments of the first degree to offences of an inferior rank." Does not Blackstone admit that death is the highest punishment which man can inflict, and therefore is appointed for the murderer? But if the highest punishment be also inflicted on the robber, the inconvenience which Blackstone himself states has arisen, and ever will arise, that when no distinctions are made in the gradations of the punishment, "the generality will conclude that there is no distinction in the gradations of the guilt." Such a conclusion they might always draw if the law written on the tablets of their hearts did not compel them to distinguish where the law had not; for as to the speediness of punishment, or dissection, or hanging in chains,* they are aggravations of punishment which suggest no idea of pain, and which bear very little proportion indeed to the difference of guilt between the murderer and the robber.

"Nice and particular distinctions upon the degrees of guilt in crimes of the same nature are particularly mentioned and observed upon by Ant. Matthæus, Grotius, Puffendorf, and other writers; but an attention to such subtle distinctions does not properly fall within the province of a legislator; for it is impossible for laws to anticipate and distinguish the particular circumstances which may palliate or aggravate the same species of offence." †

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* The supposed aggravations of punishment, however they may disgust the spectator, rarely deter the offender. "We do indeed leave each other to rot, like scare-crows in the hedges; and our gibbets are crowded with human carcases. But it may be doubted whether a forced familiarity with such objects can have any other effect than to blunt the sentiments and destroy the benevolent prejudices of the people."—Eden on Penal Law, p. 80.

† Vid. Dagge, book ii. sect, 3.

We are told, indeed, by Dr. Paley,* that "the legislature, when it establishes its last and highest sanctions, trusts to the benignity of the Crown† to relax their severity as often as circumstances

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* Chap. ix.

† "This," says Blackstone, "is, indeed, one of the great advantages of monarchy, in general, above any other form of government; that there is a magistrate who has it in his power to extend mercy wherever he thinks it is deserved: holding a court of equity in his own breast, to soften the rigour of the general law, in such criminal cases as merit an exemption from punishment." Happily in this country we can, and habitually do, "look up to the Throne as the fountain of nothing but bounty and grace. Whatsoever may be the inconvenience of frequent pardons among us, the necessity of having recourse to them in the present state of our penal code, is universally acknowledged; "and these repeated acts of goodness, coming immediately from his own hand, endear the Sovereign to his subjects, and contribute more than any thing to root in their hearts that filial affection and personal loyalty which are the sure establishment of a Prince."—Book iv. chap. 31. Thus far I agree with Blackstone. But I must refuse my assent to the opinion which he delivers in the following sentence; "In democracies this power of pardon can never subsist; for there nothing higher is acknowledged than the magistrate who administers the law; and it would be impolitic for the power of judging and of pardoning to center in one and the same person." Many and weighty are the reasons which induce me to prefer our own mixed form of government to any democracy which has yet been known to exist, and to consider the power of pardoning offenders as a very useful prerogative of the Sovereign. But I must deny the assertion that a power of pardoning, equally effectual to the offender, and equally safe for the community, cannot exist in a republic. I must controvert the principle upon which the assertion is by implication founded, that "in democracies the power of judging and of pardoning must center in one and the same person." Whether the first magistrate be elective or hereditary, whether his authority be temporary or permanent, whether the government over which he presides be monarchical or republican, it involves no absurdity to say that he may be invested with the power of pardoning, and excluded from the power of judging. But, instead of insisting upon what we may conceive, I shall appeal to what we know. The two offices of judging and pardoning are now separated in America, and the right to pardon, as we learn from Mr. Bradford, resides in a single person, who for the time being is considered as the supreme magistrate. Perhaps Black-

appear to palliate the offence, or even as often as those circumstances of aggravation are wanting which render this rigorous

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stone was led into the opinion which I oppose by his reflections upon the Athenians and the Romans. Many evils doubtless must have arisen from their administration of public justice. But Montesquieu, in the fifth chapter of book the sixth has shown the provisons that were made for the mitigation of those evils. "The Roman legislature," says he, "gave the persons accused permission to banish themselves before sentence was pronounced; and they ordained that the goods of those who were condemned should be sacred, to prevent their being confiscated to the people." We may see in the eleventh book the other limitations that were set to the power the people had of judging.

In the sixteenth and seventeenth chapters of that book Montesquieu gives a more luminous account of the executive and judiciary power in the Roman government, which they who dissent from Blackstone's opinion would do well to consult. It will be impossible for them not to reflect upon the concluding passage of that part in which Montesquieu condemns the admission of the Equestrian order to the right of sitting as judges. "A profession," says he, "that neither has nor can have any other view than lucre; a profession that was always forming fresh demands, without ever granting any; a deaf and inexorable profession, that impoverished the rich, and increased even the misery of the poor; such a profession, I say, should never have been intrusted with the judiciary power at Rome." Mutato nomine, de quo Fabula narratur? Not of any English judge who now sits upon the bench, not of the many honourable persons who now adorn the profession of the law, but of those wily, rapacious, mischief-making wretches whom every judge would endeavour to restrain, and every man of virtue would despise and detest.

Of the Athenians Montesquieu thus writes: "Solon knew how to prevent the abuse which the people might make of their power in criminal judgments. He ordained that the court of Areopagus should re-examine the affair; that if they believed the party accused was unjustly acquitted, they should accuse him again before the people; that if they believed him unjustly condemned, they should put a stop to the execution, and make them rejudge the proceeding. An admirable law that subjected the people to the censure of the magistracy which they most revered, and even to their own!"—Book vi. chap. 5. Even an English Parliament may sometimes derive instruction from the regulations of states, which in their legislative, executive, and judiciary forms were far inferior to our own. In regard to the observations of Blackstone, though untenable as a general position in

interposition necessary." But the arguments of Dr. Paley never appeared to me to vindicate what he calls "the lenity of our laws." When pardons become, as among ourselves they have become, frequent, and when to our sense of justice and compassion they appear necessary, the severity of punishments, in the opinion of Beccaria, and in my own, implies "some absurdity in the laws." To shew mankind that punishments are often remitted, as again and again has been observed, is "to nourish the flattering hope of impunity," and will lead the unenlightened and the depraved "to consider every punishment inflicted as an act of injustice and oppression." *

The reasons upon which the clemency of an English Sovereign is exercised are seldom of sufficient notoriety for any useful purpose. The force of those reasons will be differently apprehended, according to the different degrees of sagacity and humanity in the judge who reports the cases. The frequency of what is called clemency itself, weakens the authority of the laws over bad men, and compels the best men to suspect that laws so unsteadily administered have not been judiciously and equitably framed. When human wisdom has done its utmost, there will still be room for different degrees of delinquency in the same offence, and room, too, for occasional remission of punishment. But this inconvenience, which perhaps is inseparable from human justice, would be much alleviated if clemency were a virtue which "belonged oftener than it now does to the legislator, and not to the executor of the laws." There would be less room for that benevolence which, if it be ill-judged, almost proclaims a public act of impunity, and even when it is well-judged, may sometimes resemble a tacit disapprobation of the laws. I do not say, with Beccaria, that the executors of the laws should in all cases be inexorable, and in appearance resemble Caligula, who boasted of his ἀδιαιρεψιά. † But I do say, that the laws themselves

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theory, and though refuted by facts in the laws and usages of America, it is so true and so important, when applied to the English government, that in any future amendment of our Penal Code the legislature will never presume to place the power of pardoning, however limited, in any other hands than those of the Sovereign.

* See Beccaria, chap. 46. † Vid. Sueton. in Vit. Cal. par. 29.

would be more just and more efficacious if legislators were more tender, indulgent, and humane than we sometimes find them—if, instead of considering every crime by itself, as they too frequently do, "they would examine it with reference to other offences, and if they would regulate their punishments more according to the rules of distributive justice than they hitherto appear to have done."*

I have read statutes where the framers have, with the most minute attention, pursued guilt through almost all possible modifications, and where to each they have been careful "nigrum apponere theta." † But can it be right to affix the last and heaviest punishment to every degree of the same offence? All circumstances of aggravation and extenuation cannot, I allow, present themselves to the mind of a legislator. But the misfortune is, that from eagerness to prevent the general crime all distinctions are so often overlooked, and that so little attention is paid by the laws themselves to "repetition, cruelty, and combination" in the selection of objects for condign punishment. ‡

We boast with good reason of our progress in knowledge and civilization. But few and indistinct are the traces of correspondent improvement in our classes of punishment. Even when Blackstone's Commentaries on the Laws of England must be supposed to have been recently perused by every member of the legislature, in 1770 "a statute was enacted by which any person killing game between certain hours, and convicted thereof before one or more justice or justices, on the oath of one or more witness or witnesses, shall for the first or any other offence be once publicly whipped in the town where the jail or house of correction shall be:" "and this," says Mr. Eden,§ "without any reservations or distinctions as to the rank, quality, or fortune of the offender." Mr. Eden, after mentioning this statute, says, "the tacit disapprobation of mankind consigns such laws to disregard and oblivion, but they should be repealed." Doubtless they should, for they call to our mind the observation of Beccaria, that "the barbarity and ferocity of our ancestors, the Hunters of

* Dagge, vol. i. p. 200. † Persius, Sat. iv.
‡ Vide Paley, chap. 9.
§ Principles of Penal Law, chap. 7.

the North, still subsist among us in part of our laws, which are always several ages behind the actual refinement of a nation."*

"By statute 31st of George II. it is made felony without benefit of clergy to set fire to any house, barn, or outhouse, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood." "This clause," as is well observed in the Principles of Penal Law, "is a strong instance of the vague, unfeeling, undistinguishing carelessness with which Penal Laws have been composed even in the most polished times. The penalty should in all cases, if possible, bear some proportion to the malice and mischief of the offence; but every idea of proportion is obliterated when the same degree of guilt and punishment is assigned to the incendiary of a populous town and to the destroyer of a small heap of dried grass." † Invitus hæc tanquam vulnera affingo. But if from negligence, or false delicacy, or temerity, they are suffered to fester with accumulated venom, "sanari non possunt." ‡

It might be shown from many instances that the minds of our countrymen, while they were progressive in political knowledge, were retrograde in jurisprudence. In the reign of our immortal deliverer William III. it was enacted, "that all persons who should be convicted of any theft, and should have the benefit of clergy allowed them, instead of being burnt in the hand should be branded in the most visible part of the left cheek, nearest the nose." What shall resist the charms of novelty and reform, especially when they are accompanied with an increase of power? The statute, it should seem, was executed with no less zeal than it had been enacted. Offences were committed—offenders were convicted—faces, old and young, ugly and handsome, carried about them the outward and visible signs of the inward want of grace. So, however, it happened, that in the fifth year of the very next reign, our legislators, some of whom had perhaps been employed in passing the statute, found the necessity of repealing it, and they had the good sense and honesty to use a preamble which might with consummate propriety be prefixed to the repeal of other penal laws now in force. "It has been found," say they, "by experience, that the said punishment hath

* Chap. 29. † Dagge, vol. iii. p. 176, and Eden, p. 271.
‡ Livy, lib. xxviii. par. 27.

not had the desired effect, by deterring such offenders from the further committing such crimes and offences; but on the contrary, such offenders being rendered thereby unfit to be intrusted in any honest or lawful way, become the more desperate."

"If Parliament," says Blackstone,* "had referred the bill to some of the learned Judges, it is impossible that in the eighteenth century it could ever have been made a capital crime to break down (however maliciously) the mound of a fish-pond, whereby any fish shall escape; or to cut down a cherry-tree in an orchard. Were even a committee appointed but once in a hundred years to revise the criminal laws, it could not have been continued to this hour a felony, without benefit of clergy, to be seen for one month in the company of persons who call themselves, or are called Egyptians."

"In the present age," says the commentator on Beccaria,† "we seem universally aiming at perfection; why then do we neglect to perfect the laws upon which our lives and our fortunes depend?" Absolute or complete perfection is, in one sense of the phrase, we all know, unattainable by limited agents; and even perfection, if the word be strictly analyzed, must always be relative, and have for its measure‡ the power and the condition of those who aim at it, which at different times and from different causes will have incalculable varieties. Even this relative perfection will be comparative, as between one nation and another, and between different ages and different forms of society in the same nation. But if it be within our reach to lessen the number, or to correct the quality of any inconvenient circumstances which enter into the comparison, the experiment surely is not unworthy of a free and a civilized people:

"Est quadam prodire tenus, si non datur ultra."§

In England that has happened which the same commentator wished to happen in France. The laws of humanity have soft-

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* Book iv. chap. 1. † Chap. 22.

‡ "That is in truth perfect that is perfect in relation to its use and end, *cui nihil deest*,—that may be useful and apposite to that end." (Hale on the Amendment of the Laws, chap. 2.)

§ Hor. lib. i. Epist. 1.

ened some of our rigorous customs without facilitating the commission of crimes, and therefore it is not unreasonable to hope for some reformation in those legal proceedings, "wherein our legislators seem to have been influenced by too much severity, and our criminal procedures appear in too many instances to point only at the destruction of the accused."

It were invidious to point out all the causes which in later times have led to the multiplication of penal statutes. Too much I fear has been granted to the interests and sentiments of commercial men. But let us not forget that the trading and commercial interests, by enlarging the wants of mankind, have diffused the principle of benevolence, that "if they have promoted self-love, they have with equal pace advanced Union,"* and that there is a tenderness and delicacy in the present state of national virtue, which superficial and fantastic writers have vainly endeavoured to resolve into effeminacy, pusillanimity, and selfishness. Above all, let us consider that improvements in arts and commerce have provided employment for the poor; have raised their minds from the sullenness of discontent and the gloom of despondency; have inspired them with notions of cleanliness and decorum, which it is impossible for men under the pressure of extreme penury to feel; have given them a sense of their usefulness to society, and their claims to protection from it; have supplied them with comforts which make existence desirable, and rescued them from numberless temptations to the violation of the law. The evils (for such they are) arising from the increase of artificial wants, and from the assemblage of large bodies in manufacturing towns, bear no proportion to the moral and the political advantages which I have just now enumerated, and many of which from their very nature carry along with them correctives for idleness and thievery.

Crimes may change their form, as Physicians tell us, old diseases retreat, and new ones succeed. But if the general health of the body politic be invigorated, as it most assuredly is, by progressive civilization, it seems to me that the sounder parts may be preserved and the morbid healed, without precipitate and frequent recourse to cauteries and amputations.

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* Dagge, vol. i. p. 308.

In an age of ignorance and barbarism the laws will be tinged with the spirit of the people, and their government. They are capriciously relaxed, or severely enforced. Good men acquiesce when they do not approve, and the bad may be said to submit rather than to obey. Slaves are doomed to suffer and to fear. But they are seldom accustomed to reason, and never permitted to complain.* In free governments, on the contrary, the very act of enquiring into the grounds and effects of laws is a direct proof of increasing knowledge. It constitutes a presumptive proof of such improvements in the actual state of society, as render the former code inconvenient or oppressive; and when the expedients proposed by intelligent men harmonize with the silent wishes of the community, it becomes the duty of every wise and honest legislature to supply what is defective, and to correct what is mischievous.

My observations upon human life will not permit me to take my station among the "Laudatores temporis acti, se pueris."† It were a false statement, if I were to say, "corruptissima Republica plurimæ leges,"‡ and it were false reasoning if I should

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* From the concurrent testimony of travellers, who had opportunities to observe, and were under no temptation to deceive, there is not any part of the known world, except Japan, where less value is set upon human life than in Turkey. The character of the people is debased and depraved by the ruthless obduracy of their magistrates, and the sanguinary spirit of their laws. They experience the worst effects which the doctrine of Predestination can produce. They are careless about the preservation of an existence, which caprice or cruelty may in a moment take away. They are indifferent, and even adverse to all the intellectual and moral improvements which might render that existence more dear to the possessor, and more useful to his species. They are at once servile and turbulent, sluggish and rapacious, superstitious and crafty. They disobey without incurring hatred, and they perish without exciting pity. In such a state of things, as the laws have corrupted the genius of the people, neither the experience nor the reflection of the people is likely to produce any correction of the laws. In the mean time military tyranny adds little to the security of the government, and judicial severities contribute yet less to the amendment of individuals.

† Horat. Art. Poet. ‡ Tacit. Annal. lib. iii. par. 7.

ascribe the improved morals * of my countrymen to the increased severity of their laws, rather than to their religion, their freedom, the mild spirit of their government, and their general progress in science, in arts, and in all the various pursuits which multiply the enjoyments and facilitate the duties of social life. These, co-operating with other causes, will retard the moral resolution of which a philosophical historian speaks with qualified assent. "Rebus cunctis inest quidam velut orbis, ut quemadmodum temporum vices, ita morum vertantur;"† and my gray hairs will be brought down with less sorrow to the grave because I can apply to my countrymen what he said of his own age: "Non omnia apud priores meliora, sed nostra quoque ætas multa laudis et artium imitanda posteris tulit."‡ But it might not misbecome our legislators to consider whether there be room for another observation made by Tacitus; for, upon comparing the manners of the present age with those of generations which have passed away, intelligent men may be disposed to exclaim,§ "ut antehac flagitiis, nunc legibus laboratur."

Mr. Hume, in his third essay, part 1, says, very truly, "that the force of laws, and of particular forms of government, is so great, and they have so little dependence on the humours and tempers of men, that consequences almost as general and certain may be deduced from them as any which the mathematical sciences afford us." In this country the forms of government are notoriously at variance with the spirit of our criminal laws, and it cannot be too often repeated that the excellence of those forms is perpetually, but most impertinently, adduced as a compensation, and even an apology, for the rigour of that spirit. But if civilization has improved the forms of governments, why should it not be allowed to mitigate the harshness of laws? "When men had but newly resigned the privilege of revenging their own wrongs,"‖ it might behove the magistrate to make punishments very severe. But if the causes which regulate human action were carefully considered, it would be found that

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* "Multa duritie veterum melius et lætius mutata." (Tacit. Annal. lib. iii. par. 5.)

† Vid. Tacit. Annal. lib. iii. par. 12. edit. Lips. ‡ Ibid.

§ Par. 5. ‖ Vid. Dagge, vol. ii. p. 164.

severity is less necessary when mankind are civilized—that the cruelty of indiscriminate punishment itself counteracts the natural effects of civilization—that instead of softening the ferocity of depraved minds it tends to corrupt and to harden them—and that bad laws act upon society as bad education does upon individuals.

Complaints are made, principles are unfolded, regulations are proposed, and yet penal statutes continue to be multiplied without any visible diminution of the offences against which they are pointed. The study of Beccaria, and other writers on jurisprudence, has prepared the best members of the community thus to address their legislators: *νομοθέτας καθίστατε, ἐν δὲ τούτοις τοῖς νομοθέταις μὴ θῆσθε νόμον μηδένα, εἰσὶ γὰρ ὑμῖν ἱκανοὶ, ἀλλὰ τοὺς εἰς τὸ παρὸν βλάπτοντας ὑμᾶς λύσατε.*"* Are we a brave people? Do not take advantage of this noble quality, and inflict death upon fellow-subjects who, partaking of the national spirit; and influenced by a climate which perhaps aids it, fear not to die, and who, under more auspicious circumstances, might display their bravery in defence of the public. Are we a free people? Do not make our liberty a plea for dooming us to punishments more adapted to slaves, who in consequence of their slavery "become so obstinate,† capricious, and resolute, as to defy all dangers;" and beware of invading our natural right to life, upon the pretence that our social rights are better secured, and owe their security only to the severity of our laws. If the subjects of Russia have not been corrupted by the remission of capital punishments, why should we look for a less favourable effect from such remission among Englishmen? If culprits doomed to slavery and hard labour in Siberia have been reformed, why should not confinement and hard labour produce the same reformation among ourselves? ‡

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* Demosth. Olynth. ii.

† See Montesquieu, book vi. chap. 13.

‡ In note x, upon page 35 of the work I have before quoted, Mr. Bradford takes an historical view of ancient and modern legislation, so far as it is connected with capital punishments. It is worthy of the most attentive perusal; and I shall select from it that part of the edict by which the Duke of Tuscany abolished the penalty of death, and in which are stated the reasons for that

I have already said that little good is to be expected from the repeal of one or two statutes. The system itself must be changed, and that change must be made by the general revision of our penal code.

We read of an enlightened people among whom "Thesmothetæ quotannis in domo publica, ubi leges adservabantur, con-

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abolition. "We have seen with horror the facility with which in the former laws the pain of death was decreed, even against crimes of no very great enormity; and having considered that the object of punishment ought to consist in the satisfaction due either to a private or public injury; in the correction of the offender, who is still a member and child of the society, and of the state, and whose reformation ought never to be despaired of; in the security (where the crime is very atrocious in its nature) that he who has committed it shall not be left at liberty to commit any others; and finally, in the public example; and that the government, in the punishment of crimes, and in adapting such punishment to the objects, towards which alone it should be directed, ought always to employ those means which, whilst they are the most efficacious, are the least hurtful to the offender; which efficacy and moderation we find to consist more in condemning the offender to hard labour than in putting him to death; since the former serves as a lasting example, and the latter only as a momentary object of terror, which is often changed into pity; and since the former takes from the delinquent the possibility of committing the same crime again, but does not destroy the hope of his reformation, and of his becoming once more an useful subject; and having considered besides, that a legislation very different from our preceding one will agree better with the gentle manners of this polished age, and chiefly with those of the people of Tuscany, we are come to a resolution to abolish, and we actually abolish for ever, by the present law, the pain of death, which shall not be inflicted on any criminal," &c. (Sect. 51.)

"If any credit," says Mr. Turnbull, "can be given to the authorities of well-informed travellers, the fact of the wholesome effects proceeding from a change of the penal laws of Tuscany seems to be sufficiently established. The intelligent Dr. Moore speaks highly of it in his Travels, and no one with more precision to persuade than General Lee in his Memoirs." "In short," says the latter, after dwelling on its policy, "Tuscany, from being a theatre of the greatest crimes and villainies of every species, is become the safest and best ordered state of Europe." (P. 72.) See also Moore's Travels and Lee's Memoirs as quoted p. 56 by Mr. Bradford.

veniebant, ut viderent ne qua lex alteri contraria legi extaret; ne qua irrita inter ratas, neve plures de una et eadem re. Si qua abroganda lex erat, unicuique legi abrogandæ quinque ex universis Atheniensibus eligebantur patroni. Populus, expensis utrinque rationibus, sciscebat quas leges vellet e nomothetarum consilio quibus tamen rem omnem committebat, vel antiquari vel ratas haberi. Hoc legum examen erat valde necessarium in republica Atheniensium, ubi leges cumulandi, abrogandi, sanciendi pruritus et φιλοκαινία dominabantur."* I am afraid that the "pruritus leges cumulandi" may sometimes be imputed to the fondness of our countrymen for checking new or old crimes by new statutes which inflict capital punishment. But the love of novelty is fortunately not quite so much the national characteristic of an Englishman as of an Athenian. Proposals for the revision of our penal laws, as we shall presently see, cannot be charged with novelty, and the example which the people of Athens have set us, both for repeal and enactment, may be imitated with perfect safety.

This subject did not escape the notice of the temperate, learned, and sagacious writer to whom we are indebted for many valuable observations upon our ancient statutes. He has favoured us with a proposal for new modelling them, and at the same time tells us, that by "the term reformation he does not mean to make a new arrangement and institute of the whole body or the law, as in the time of Justinian or Code Frederique." I give no opinion upon the propriety of reforming our civil code. But the precedent which he mentions of an attempt to reconsider the penal statutes of the realm, in the time of James I. will justify me in expressing my hope, that in better times this great point will "be sooner or later attended to." Our penal laws are, I am sure, not in a much better condition now than in the reign of James. But the general principles of jurisprudence have been more accurately investigated by learned foreigners, and by our own countrymen. The state of society is more favourable to increased lenity than it was in remote ages, and persons may be

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* See Mounteney's note on sect. v. of 2d Olynth. and the authors there quoted by him. See also Harpocrat. in voc. θεσμοθέται.

found not less qualified for the task than the excellent men * whom James selected. We are in no danger of a parliamentum indoctum, such as our forefathers saw, nor shall we ever read a royal proclamation in which "the voters for members of Parliament are directed not to choose curious and wrangling lawyers, who may seek reputation by stirring needless questions."†

The House of Lords is a permanent body, and abounds with well-informed men, whose presence would give "direction" and "valuable assistance," as well as solemnity"‡ to the revision of our penal statutes. It would be a work of time and deliberation. But I see nothing in the constitution of the House of Commons which should prevent the appointment of a Committee,§ the labours of which should continue from year to year, and

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* Lord Chief Justice Hobart, Mr. Serjeant Finch, Mr. Heneage Finch, Mr. Noye, Mr. Hackwell, and Lord Bacon himself, were employed for a considerable time in this undertaking, and had made some progress in it.—Barrington, p. 500.

† See Barrington, p. 337. ‡ See Paley, chap. 8.

§ Hale proposes, that in the amendment of the laws "The King, with the advice of both Houses of Parliament, should require the judges and other sages of the law to prepare bills—that no man should intermeddle in so great a business without the most authentic injunction by the King and his supreme council—that bills should be presented to the House of Commons in the first instance—that when they have been once or twice particularly debated in the Committee, the Judges should be called to a solemn debate at the Committee of the Commons, where they may give the reasons why they go so far and no farther, and where their opinion will be asked touching any alterations or amendments, and the reasons in relation thereto, lest a very good and profitable bill be suddenly spoiled by a word inserted or a word expunged—and that when the bill comes to the Lords, and is twice read and committed, all the Judges should attend the Committee for the reasons above given."—Ch. 4.

These are excellent regulations. The reform which I hope will one day or other be accomplished in our Penal Code is so extensive that it cannot be effected by the authority of Courts and Judges, without troubling Parliament. My wish is, that sages of the law should not be employed in it exclusively; that the Committee should consist not only of members in both Houses of Parliament, but of able lawyers who are not in Parliament; that some of the Judges should form a part of the

in which vacancies made by the death of member, or by their not being re-elected to Parliament, should be filled up. The assistance of lawyers most assuredly should not be wanting, and it would be well if some of them were "persons not sitting in Parliament." But I confess that I should expect little progress to be made in so great a work, if only "one or two barristers should be appointed, who from year to year might make a report to the Privy Council, as likewise to the Lord Chancellor, the Master of the Rolls, and the twelve Judges, of a certain number of statutes which should either be repealed or reduced into one consistent act."*

When Mr. Barrington proposed the foregoing expedient, and when Judge Blackstone † spoke of a Committee appointed but once in a hundred years, they probably were influenced by professional prejudices, which may be easily pardoned, but not very safely adopted. Many enlightened men may not be prepared to entrust the venerable persons of whom Mr. Barrington speaks

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Committee; that in cases of difficulty they should be consulted by the Committee; and that when the Code is brought before the Lords, and while the merits of it are debating, the Judges should attend in their places and give their opinions. After all, if the business were undertaken seriously, it would be easy to adjust any difference upon the duties which are to be assigned to the Judges. So again, I should gladly give up my opinion upon reforming the whole code at once, if I were convinced that the legislature were earnestly bent upon revising and reforming every part of it seriatim.

The cause for which I am solicitous has found a most able advocate in Dr. Colquhoun. "Some steps," says he, "have indeed been taken in Parliament towards a general revision of our statute law, (see the 'Report from the Committee of the House of Commons on Temporary Laws,' May 13, 1796, and also the 'Report from the Committee for Promulgation of the Statutes,' December 5, 1796, and the 'Resolutions of a Committee of the whole House,' May 30, 1797,) and which, it is hoped, will ere long be adopted. 'Whenever the time shall arrive that the existing laws, which form the present Criminal Code, shall be referred to able and intelligent men effectually to revise, consolidate, and adjust the whole in a manner best suited to the present state of society and manners, the investigation will unquestionably excite no little wonder and astonishment."

* See Barrington, p. 503. † Book iv. chap. 1.

with a discretionary power of permitting or forbidding any statute to be laid before Parliament.* But their opinions, when delivered in Parliament, would deservedly have great weight,

* I fear the prejudices of professional men, when they are exclusively employed as guides to legislators. "Coke thought it would be a great defect in government to have such devilish abominations as sorcery and witchcraft to pass with impunity." (Eden, p. 102.) Hale, who has made many judicious remarks on the general unfitness of the Jewish laws in Christian countries, yet supposes it a murder, if a man wilfully suffers a beast notoriously mischievous to wander abroad, and it kills a man. His reason is, that by the Jewish law the offender was to die; and he mentions a report of a person who had been actually executed on this account. (Eden, p. 236.)

After printing my observations upon the punishment of an innocent man, I met with a passage in Mr. Eden's book which had escaped my notice, and which I will here produce, as it is materially connected with the subject which I was then discussing.

"Let us suppose," says Judge Foster, "the case of an upright and deserving man, universally beloved and esteemed, standing at the place of execution, under a sentence of death manifestly unjust. This is a case that may well rouse the indignation, and excite the compassion of the wisest and best of men. But wise and good men know that it is the duty of a private subject to leave the innocent man to his lot, however hard it may be, without attempting a rescue; for otherwise all governments would be unhinged." (Foster, page 316, quoted by Eden, page 327.)

"The worthy Judge," says Mr. Eden, "seems to have made an unpleasing" (I say fallacious) "distinction between the stability of governments and the private rights of the people. The stating of the case now before us supposes absolute certainty as to the injury, and excludes all possibility of popular misconception. It is difficult to persuade oneself that in such a case the resistance of the bystanders would be unjustifiable. (Page 238.)

I am not fond of disputing upon extreme cases. But when proposed by writers whose acknowledged virtues and distinguished talents give authority to their conclusions, they must be treated according to their real merits.

In a single case, then, of this kind, I should admit the premises, and deny the inference. The individual may be rescued. But the government would not be unhinged, and the laws would be left to their usual proper and full efficacy against real offenders. If the cases were frequent, the laws, or the administration of them, must be faulty; and the government neglecting to remedy

and they might be occasionally consulted upon particular questions by one or more members of the Committee. Our Penal Code is not, like the Civil, burdened with subtleties and distinctions which require the aid of professional education. In both Houses of Parliament persons may be found, who with little

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the evil ought to be altered—by persuasion, if it be possible; or if it be not, an humane and enlightened people would hardly fail to accomplish the alteration by force. Even with the remote prospect of such an event, a wise legislature would employ every seasonable expedient to avert it.

As to wise and good men, they are likely to be more patient under an iniquitous sentence executed upon themselves, than upon other men; they would beware of forming any fixed rule for their own conduct before the time of trial; and by nothing short of manifest danger to the community would they be deterred from resisting such manifest oppression to an injured fellow-creature.

Fortunately in this kingdom we are in little or no danger of being called upon by such an occasion to decide between obedience to the magistrate, and justice not only to an unoffending individual, but to all other of our fellow-subjects, who must appear to have a personal interest in his fate.

Strong must have been the influence of professional partiality on the mind of Foster, when he stated such an unusual supposition, and assigned to it such consequences as men generally ascribe to the most flagrant overt-acts of high treason. But is it quite safe to vindicate the ordinary and actual practice of jurisprudence by extraordinary and hypothetical cases, which are better adapted to the wildness of speculation? Is it necessary to secure the authority of the laws which give effect to a just sentence, by pointing out the mischiefs of resistance to that authority, when a sentence it so glaringly unjust? The calm and dignified discretion of a judge ought never to be lost in the misty subtleties of a casuist, or the licentious exaggerations of a rhetorician. He may dogmatize without contradiction upon the bench; but he cannot err in a book without the hazard of detection and reproof. Blackstone wrote his Commentaries in the stillness of academic retirement: his timidity or his policy sometimes led him to acquiesce in received opinions; and his eloquence is now and then displayed in defending, when his reason should have been employed in examining them. But the reports of Foster are chiefly founded upon practice; he was a soberminded, upright, and truly conscientious judge, and therefore his decisions even upon ideal cases might have the greater weight.

difficulty would know what "provisions* the laws have already made to remedy the mischief complained of; who could calmly and maturely consider in what instances those provisions have failed;" who could appreciate justly the value of information afforded them by persons of experience in the administration of the laws, and who, to say the least, are quite as likely to judge without prejudice on the probable consequences of proposed alterations. If the Committee of which I am speaking were established in this country, the duties of it would, I think, be discharged most effectually by mingling professional men with other persons whose experience in the affairs of common life was large and various, and whose minds were richly stored with that knowledge which is supplied by the science of ethics, by the history of ancient and modern legislation, and by the comparison of the political and moral circumstances which influence our own national character with those which prevail in the other civilized states of Europe. To men thus qualified to judge upon facts and principles, causes and effects, the language of Gravina, on a subject connected with the civil laws of Rome, would not be uninstructive nor uninteresting: "Quoniam nihil certi exploratique comprehendere possumus, nisi quod hauriamus de fonte naturæ; ideo tantisper a matre veritatis philosophia facem illam arripiam, qua per tenebricosum iter, et opinionibus obsessum libere percurram ad ea primordia, unde veritas protrahatur in lucem. Qui enim adhuc scriptis suis imperii fundamenta jecerunt e jurisconsultis recentioribus, non tam abstrusas naturæ notiones, quam auctoritates et opiniones pro certis firmisque principiis tradiderunt: et quæ consequentia esse debuissent, pro antecedentibus acceperunt."† "Knowing," says Mr. Eden, "that political wisdom is the result of experience rather than of theory, they will consider the safety of the public as the supreme law of policy, and, if compelled in any degree to deviate from the sacred principles of justice and humanity, they will submit to the deviation merely as an occasional result from the imperfection of our nature. But they will never allow, that among the crimes of equal malignity those which the offender has the strongest in-

* Blackstone.

† Gravina de Orig. Jur. Civil. vol. i. p. 106.

ducement to commit should always be punished most severely. They will consider it as a position both morally and politically false, to maintain without limitation and without distinction, that legislature may justify the infliction of whatever degree of severity is necessary for the prevention of any particular crime."*

"Trebonianus," says Mr. Barrington,† "has been much condemned by the writers on the civil law, who when Justinian had allowed him and his assistants ten years for compiling the Pandects, from a too great desire of dispatch, published the collection in three." The Penal Laws of England happily do not occupy quite so large a space as the Pandects. They are more within the reach of inquirers than the matter which Trebonian had to select and methodize from a confused mass; and the task of reviewing and reforming them, if committed to enlightened and truly patriotic men, might, without any improper "desire of dispatch," be executed in a shorter time than Justinian allowed.

What errors, and what contradictions throng upon our view, when we impartially look to the practices either of past ages, or of our own! How much is there to humble and to affright us, when we seriously reflect upon the marvellous lethargy or the crooked abuse of our boasted faculties "in the things which belong to our peace!" Man, a frail and fallible being, will sometimes be content to let his "strength be the law of justice," and sacrifice the sweet charities of social life to the fascinations of that "fear which is little else than a betraying of the succours which reason offereth."‡ But the Deity, as I have read in a most wise and holy book, "delighteth not in the destruction of the living: He knoweth of what we are made," and hath directed his creatures not only "to judge with the judgment of truth," but to "shew compassion every man to his brother;" not only "to do justice, but to love mercy,"

What the unknown writer of the Dialogue de sui seculi oratoribus says of his intercourse with Marcus Afer and Julius Secundus, you and I must have experienced towards some illustrious persons of our own days. "Eos in senatu non modo studiose audiebamus, sed domi quoque, et in publico affectabamus,

* See Principles of Penal Law, chap. 2.
† Page 503. ‡ Wisdom.

ut fabulas quoque eorum, et disputationes, et arcana semotæ dictionis penitus exciperemus." *

' About four years ago I was present at a most interesting conversation between a very learned person who presides in our Ecclesiastical and Admiralty Courts and Mr. Fox, upon the rigour of our Penal Code, and upon the responsibility of those who administer it to the judgment of the public. That conversation gives me abundant reason to believe that Mr. Fox, if he were now among us, would dissent from scarcely one of the opinions which I have here submitted to your consideration.

If Mr. Fox had lived to assist in allaying the storm by which Europe is now agitated, that mind which had provided redress for African slaves, would, I trust, have been turned with due wariness, but due firmness and activity, to the relief of those unhappy wretches at home, who "in the world, and the world's law" often "find no helper;" who are pitied for a moment, and in a moment forgotten; and who perish without leaving any lasting impression of terror from their sufferings, which almost cease to be exemplary, when they are frequent, excessive, and promiscuous. He would have transferred to legislation the spirit of a passage in which an ancient writer pleads for the equitable and humane administration of the laws. "Nolo accusator in judicium potentiam afferat, non vim majorem aliquam, non auctoritatem excellentem, non nimiam gratiam. Valeant hæc omnia ad salutem innocentium, ad opem impotentium, ad auxilium calamitosorum. In periculo vero et pernicie civium repudientur." †

He would have brought to the task an understanding quite unfettered by professional and national prejudices, undismayed by dastardly and fantastic fears, enlarged by historical, philosophical, and practical views of human nature, uncorrupted by the insolence of wealth and power, exquisitely sensible of the allowances to be made for human frailty, and anxious to blend the general security of society with the exercise of lenity to individual offenders. "Accustomed," like the enlightened Guardian of the Laws whom Beccaria describes,‡ "to behold truth and

* Tacit. Dialog. de Orat. † Orat. pro Murena.

‡ Chap. 42.

not to fear it, and contemplating mankind from the most elevated point of view, he would have considered the nation as his family, and his fellow-citizens as brothers." Knowing with Montesquieu,* that "in moderate governments the love of one's country and the fear of blame are restraining motives, capable of preventing a multitude of crimes, and that the laws therefore do not require so much force and severity," he, like a good legislator, would have been less bent on punishment than on prevention, and more attentive to inspire good morals than to inflict penalties."

He would have considered "the implacability of a Judge as becoming a virtue only," † when it is joined to a mild legislation. The same accuracy of judgment which in the present state of things represented clemency to him "as the noblest prerogative of the Throne, but at the same time a tacit disapprobation of the laws," would have induced him to recommend and to practise it "as a virtue which peculiarly belongs to a legislator, and which ought to shine in the code rather than in private judgment."‡

Though in political discussions he might have distinguished between the spirit and the letter of the laws, yet in framing them he would have guarded against the dangers practically arising from the distinction, and by giving precision and perspicuity to the letter, he would "have put a stop to that fatal liberty of explaining, by which the life and the liberty of a delinquent may become victims to the false idea or ill humour of a Judge who mistakes the vague result of his own confused reasoning for the just interpretation of the laws." § He would have endeavoured "by a judicious penning of the laws, to create a detestation of the crime forbidden, and by dint of reason and persuasive argument to convince the judgment that the prohibitions and penalties included in them are just and expedient for the good of society." He would have pondered again and again upon the sage observation of Montesquieu, that "a legislator desirous of remedying an abuse thinks of nothing else;" that "his eyes are open only to this object, and shut to its inconveniences;" that, "when the abuse is redressed, only the severity of the legislator is seen, yet

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* Book vi. chap. 9.

† See Beccaria, chap. 27.

‡ Ibid. chap. 46.

§ See Beccaria, chap. 4.

an evil springing from it remains in the state, where the minds of the people have been corrupted, and are become habituated to despotism."* He would have remembered that "men in moderate governments especially are more to be led by reason than terror; and that the compassion mixed with indignation which the execution of a criminal excites, occupies the mind much more than that salutary fear which the laws should endeavour to inspire."† Wishing to follow "nature, who has given shame‡ to man for a scourge," he would have employed this "best instrument for the promotion of morality, and the extirpation of vice," in many classes of crimes upon which death is now inflicted with little effect: and to the most odious of those classes he would have assigned very great pain united with very great infamy. But he would have used the same instrument with economy and discretion, by confining it to offences which from their own nature are shocking to our feelings; "not frequently, because the power of opinion grows weak by repetition; nor upon many persons at the same time, because the infamy of many may ultimately resolve itself into the infamy of none."§ He would

* See Montesquieu, book vi. chap. 12.

† See Beccaria, chap. 28, and Dagge, chap. 3. sect. 2.

‡ The effects of shame are well described by Bishop Taylor: "There cannot easily be a great shame amongst men, but there must be a great fear of vengeance from God; and the shame does but antedate the Divine anger, and the man feels himself entering into it, when he is enwrapped within the other. A man committing a foul sin, which hath a special dishonour and singular disreputation amongst men, is like a wolf espied amongst the sheep; the outcry and noises amongst the shepherds make him flee for his life, when he hears a vengeance coming. And besides, in this case it is a great matter that he perceives all the world hates him for his crime, and that which every one decries must need be very hateful and formidable, and prepared for trouble."—Ductor. book i. chap. 1.

I am sorry that I omitted that rape was a high aggravation of the guilt of robbery, in the wicked youth to whose case I adverted in page 202. But this circumstance does not alter my opinion upon the inefficacy of his death as an example, when it was inflicted with so little publicity. Surely Judges would not be blameable, if they occasionally gave directions about the time, place, and manner of executing criminals.

§ See Montesquieu, book vi. ch.12. Eden on Penal Law, ch. 7. Dagge's Criminal Law, chap. 9. sect. 2; and Beccaria, ch. 23.

have looked back to the past with pity, and with solicitude have provided for the future. He would have prevented the first advances to guilt, by furnishing the lower classes of men with that instruction which points out to them the usefulness as well as propriety of diligence, temperance, and honesty; and the danger as well at the loathsomeness of every vicious habit. He would have made their relapse into guilt, after the commission even of great crimes, more difficult and more inexcusable, by supplying them with employment, which from the defects of the police, or the suspicions of individuals, it is impossible for them now to find, and by giving them encouragement so to persevere in a better course of life as gradually to recover the good opinion and good will of their fellow subjects, and ultimately to make reparation for the wrongs they had done to the community.

I have stated my opinion upon various circumstances which seem to me favourable to the speedy revision of our penal laws. Obstructions there may be from the nature of power itself, "which in all countries, and at all times, is on the watch for every opportunity to extend its own sway, and maintain by terror what it acquired by force or cunning: from the prejudices of education, which induce men to think those regulations just and expedient of which their forefathers had approved: from that indolence which leads men who cultivate the arts and sciences to leave the wheels of government to chance: from that timidity or indifference to public concerns which makes other persons tacitly acquiesce under institutions which their judgment condemns: from that courtesy which many ingenious and learned writers have expatiated with more liberality than reason on the merciful disposition of the English government; as if it were their object rather to write the panegyric than to make known the imperfections of the constitution:* and perhaps from the jealous and captious resistance, it may be, of certain classes in which prepossession, or vanity, or ambition may have created a real or an imaginary interest in the continuance of imperfect and even pernicious systems."†

From men who are "distracted by the cares or dissipated by

* Vide Eden, p. 233.
† Vide Dagge, vol. i. p. 271.

the pleasures of the world," little is to be expected in removing those impediments. But the general good sense and benevolence of the English people, the information already supplied by sober and intelligent enquirers, the wishes so often and so earnestly expressed by good subjects and good men, and the gradual preparation of the public mind for a public experiment, are more than sufficient to counterbalance any known or any probable disadvantage to the cause of humanity.

For the constitution which we now enjoy we are indebted to many various causes, in many successive ages—to the sagacity of statesmen — to the fortitude of patriots — to consequences which fell not within the good or the evil intentions of the primary agents—to the jealousies, as well as confederacies, of powerful classes—to the defeats as well as successes of contending parties—to the weaknesses and vices, as well as talents and virtues, of the ruling powers. But a constitution worthy of remaining, or even likely to remain, among a civilized people, never has been contrived, nor ever will be, by any one man, or any one body of men. The reasons are obvious, and deserve to be stated by me, because they have little or no place in that reform of our penal code which I am solicitous to see accomplished. In governments, what is old may be suddenly overthrown; but what is new cannot be suddenly established. What is really improved in the old will not blend with the new, and what deserves to be adopted in the new is marred by the old. Amidst the fluctuation of public opinions and public interests, not only usage loses its authority, but even novelty is soon deprived of its charms. That which pleased yesterday will to-day displease, and that which to-day is zealously approved may tomorrow be rejected with equal zeal. Habit maintains an irregular but stubborn conflict with passion. Timidity performs the office of prudence, in throwing checks upon zeal. Some comply with reluctance, and others oppose from perverseness. Some condemn before they understand, and others are on the watch to overset what they profess to approve. Almost every change is to be effected by the violence or the cunning of faction, and every wholesome, as well as every pernicious provision, is liable to be baffled by events which can neither be controuled by the

strongest nor foreseen by the shrewdest agents of real or pretended reformation.

But no objections of this kind seem to lie against the complete revision and amendment of our penal code. On the contrary, it is to be effected in quiet times. It is to be consigned to intelligent men, who have no personal views to be gratified by the attainment of the end, nor any such party spirit of difference in opinion, as would irritate and distract them in the choice of means. It presents no allurements of power to the ambitious, nor any opportunities for mischief to the turbulent—it leaves the form of government unaltered—the energies of it unmolested, and the general fabric of society unimpaired. It chiefly relates to the common motives and common effects of human action in common life—it carries with it every useful property which practice, whether ancient or recent, can supply for correcting the refinements of theory—it combines all the advantages of legal science and professional experience—of policy regulated by principles of justice, and patriotism guided by the love of order.

Such a reform will not be one of those changes which Hale describes as "ungrateful and unacceptable to the people, introducing jealousies and divisions among them, giving a handle to busy and turbulent spirits to insinuate into them the bad consequences that may ensue upon such change, and preparing their minds for disturbance." It will not be influenced by a "certain restlessness and nauseousness of men in what they have, or by a giddy humour after somewhat which is new, and possibly upon no other account but because it is new." It will not gratify that "passion of self-love which makes men think that they in their own particular have received some personal mischief by the present constitution of laws, and that whatsoever crosses them in their interest or concerns is unjust, and fit to be altered." It is professedly founded on those "variations in the actions and concerns of men which time has already effected," and will be accommodated, so far as human wisdom, reflecting on the past and providing for the future, can accommodate it to the "condition of multitudes in various successions of ages, and the occurrences or emergencies thereof." It is to be regulated by "an estimate made, not upon single occurrences that are to be

remedied, but upon the whole account of profit and loss—not upon this or that particular commodity, but upon the whole cargo." It will be conducted, not according to the rash assumptions of those "qui ad pauca respicientes facile pronunciant, but upon a full comprehension and circumspection of all things that are requisite" for the very difficult and very important task. It will in its substance contain only "such new appendications as do not so much constitute a new law as amend the old; so that notwithstanding these appendications our penal code will still morally remain the same code, as the Argonaut's ship was the same ship at the end of their voyage as it was at the beginning, though there remained little of the old materials but the chine and ribs of it." Committed, as I trust it will be, to such persons as I have described, it will leave us little to fear from the infirmities which befall men of parts who over-rate what they do know, and are impatient of what they do not know; who confound "the principles of jurisprudence with the fallacy or strength of a syllogism; who are unwilling to spare much pains for the acquest of knowledge in the laws; who look upon their own reason as much undervalued if it be told them that law is reason; and who, thinking it below them to be ignorant of anything, blame the law when they understand it not." As persons trained, some to the study, and others to the practice as well as study of the law, will unite their endeavours with those of accomplished senators and experienced statesmen, there can be no ground for imputing to them either that "vain-glory which induces men to tamper to get a name" —or that ambition "by which men like Absalom take the first step for lifting themselves up into place and power, by reforming the constitution or administration of the laws"—or that fear "which urges usurpers to remove such laws as sit too hard and uneasy upon their usurped power, to engage the generality of men in the acting under new laws, and to give them a common interest in a common defence against the true and just power, by the restoration of which new laws would be repealed, and new interests founded upon them would be endangered—or that envy and malice, which Hale supposes many persons might entertain, not only at the profession of the law, but at the pro-

fessors of it, upon the account of their wealth, power, number, wisdom, and the necessary use of them."*

Hale, in his "Considerations touching the Amendment of Law," speaks chiefly of our civil code, and in the detail has dwelt upon two topics which have since been under parliamentary consideration—the reforms of office, and the Crown lands. But his general remarks are equally applicable to our civil code and to the fundamental rules of our constitution, and I will produce some of them from a conviction that they cannot be reasonably employed in opposition to the reform of those penal laws, which experience has shown to be inefficacious and inconvenient upon principles of policy, as well as irreconcileable to principles of justice and humanity. "Time and long experience is much more ingenious, subtile, and judicious, than all the wisest and acutest wits in the world co-existing can be. It discovers such varieties of emergencies and cases, that no man would otherwise have imagined. And on the other side, in every thing that is new, or at least in most things, especially relating to laws, there are thousands of new occurrences and intanglements and coincidences and complications, that would not possibly be at first foreseen. And the reason is apparent; because laws concern such multitudes, and those of various dispositions, passions, wits, interests, concerns, that it is not possible for any human foresight to discover at once, or to provide expedients against, in the first constitution of a law. Now a law that hath abidden the test of time, hath met with most of these varieties and complications; and experience hath in all that process of time discovered these complications and emergencies, and so has applied suitable remedies and cures for these various emergencies. So that in truth antient laws, especially, that have a common concern, are not the issues of the prudence of this or that council or senate, but they are the production of the various experiences and applications of the wisest thing in the inferior world; to wit, time, which as it discovers day after day new inconveniences, so it doth successively apply new remedies: and indeed it is a kind of aggregation of the discoveries, results, and applications of ages and events; so that it is a great adventure to go about

* See Hale on the Amendment of Laws, chap. 2.

to alter it, without very great necessity, and under the greatest demonstration of safety and convenience imaginable."*

Yet when such necessity is supposed to exist, the interest which the higher classes of the community have, and are conscious of having, in reforming the laws, produces at least gradual and partial reformation. The inconvenience is felt by many, and and therefore many are solicitous to remove it by their complaints, or their influence, or their authority. But in the views which wealthy and powerful men take of human life, the concern they have in the penal code is in their apprehension remote, so far as the rigours of that code are likely to effect themselves; and they look to the protection which it affords to them, without pitying the hardships which it may unnecessarily inflict upon other men, and without calculating the probabilities of being equally protected by well-timed and well-considered changes in the kinds and degrees of punishment. As classes, indeed, they may be in little danger from the present state of things. But, as individuals, they will do well to meditate upon the uncertainty of human affairs, upon the weakness of human nature, and upon the possibility of being themselves pushed on by unforeseen incentives, and in unforeseen circumstances to the perpetration of crimes at which they now shudder. The most prosperous man may fall into adverse fortune, and be seduced into fraud—the best tempered man may be hurried by sudden passion into murder—the most upright and peaceable man may in some future condition of public affairs be irritated or decoyed into treason—every man in every situation, who "thinketh that he standeth," will upon reflection find abundant reason to "take heed lest he fall." Independently of these considerations, which are more immediately and more visibly personal, every man has an indirect interest in the exercise of justice and humanity from every human being to every human being in every rank of society. He has a direct interest in the efficacy of the laws, as they tend to restrain or harden offenders—as they satisfy or disgust by the force of example—as they now upon the whole produce more good or harm, and as in consequence of

* Hale, chap. i. p. 254, vol. i. of Hargrave's Tracts.

reform they may hereafter produce greater good and less harm. From the love of esteem, and other social sympathies, which for the wisest purposes have been planted in the heart of man, he has at least an ideal interest in the opinion which is formed of the very same laws by those who are to obey, as well as those who are to frame and administer them—by intelligent observers at home and abroad—by the present generation and by posterity. The States of America, and European nations more or less civilized, direct their attention more particularly to England; and painful it is for an Englishman to recollect, that in our penal code they discover what in their own judicial regulations they ought to avoid, rather than what they ought to imitate.*

They who watch with unceasing jealousy against every real or imaginary infringement upon their political liberty, are often inattentive or indifferent to those encroachments which are made by penal laws upon their civil rights. They seem to forget that opportunities, and even provocations, for offending against the public authority of a state, seldom occur—that the temptations to commit such offences are in the first instance usually confined to the powerful, and therefore the few—that the dangers to which the many are exposed lurk in a nearer quarter, and that the possible events of every passing day give every subject of every condition an interest in the grounds and tendencies—in the enactment and administration—of those laws which operate directly and constantly upon the concerns of private life.

In the reform of our Penal Code, the most wise, most virtu-

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* They who wish to see the various rigours of punishment as suggested by imperfect policy, barbarous manners, blind superstition, or feudal tyranny, would do well to consult Disney's "Collection of ancient Laws against immorality and profaneness." It is a treasure-house of facts, which must amply gratify the curiosity of readers, severely exercise their compassion, and awaken many useful but painful reflections upon the miseries which man has been doomed to suffer from the ignorance, caprice, rashness, and cruelty of legislators. When the political, civil, and penal laws of different nations in different ages, fill so many volumes, to what principle of human action in error, prejudice, indolence, pride, or revenge, is it owing that regulations uniting justice with lenity, and authority with wisdom, in the prevention of crimes, are so rare?

ous, and most powerful members of the community may be called upon to lend their aid, not only by their pity for the sufferings of unhappy offenders, their respect for the credit of the laws, and their solicitude for the honour of their country in our own and every succeeding age, but by the duty which as men and as subjects they immediately owe to themselves, their families, and their posterity. "These enquiries," says the amiable and enlightened author of the Principles of Penal Law, "deserve the attention of every man amongst us. For no rank, no elevation in life, no conduct, how circumspect soever, ought to induce any reasonable man to conclude that the penal system doth not, nor possibly can concern him. A very slight reflection on the numberless unforeseen events which a day may bring forth, will be sufficient to shew that we are all liable to the imputation of guilt; and consequently all interested, not only in the protection of innocence, but in the assignment to every particular offence of the smallest punishment compatible with the safety of society."*

Far above all heroes, and far above all politicians, as we usually find them, would be that benefactor to his species† whose

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* See Mr. Eden's work, p. 130, where he quotes a most solemn and instructive passage from the Preface to Foster's Crown Law.

† In justice to the memories of Mr. Bradford and Mr. Lownes, I will produce the following just eulogium upon these worthies from M. Rochefoucauld Liancourt. After mentioning with praise the Quakers, he thus proceeds:

"Un d'entr'eux (Caleb Lownes,) en a presqu'à lui seul tout l'honneur. La doctrine de Beccaria et d'Howard a promptement germé dans son cœur tout humain. C'est lui qui a principalement animé ses frères de l'espérance de son exécution. C'est lui qui a provoqué le changement de régime dans les prisons; qui a proposé d'y substituer la douceur, la fermeté et la raison aux fers et aux coups; qui s'est laissé patiemment traiter de visionnaire, sans ralentir ses démarches dans l'entière confiance du bien que sa perseverance opérerait. C'est lui dont le zèle infatigable, intéressant à sa cause tous ceux qu'il croyait pouvoir l'aider dans sa réussite, a obtenu de la confiance de la législature, ces loix, je ne dis pas seulement de bienfaisance, mais de justice stricte, de politique bien entendue. C'est lui enfin, qui consentant à être élu inspecteur à chaque nomination, est l'agent principal de

wisdom should have taught him to set a right value upon the life of man—whose eloquence in legislative assemblies should cause "mercy and truth to meet each other," and under whose auspices should arise an order of things more worthy of man as a moral, and more adapted to him as a social being, than the golden age pourtrayed by poets, or the Millennium panted for by enthusiasts.

"Adsit
Regula, quæ pœnas peccatis irroget æquas,
Incolumi Jove et Urbe." *

"If these truths," says Beccaria, "should haply force their way to the thrones of princes, be it known to them that they come attended with the secret wishes of mankind, and tell the sovereign who deigns them a gracious reception, that his fame shall outshine the glory of conquerors, and that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antoninus, or a Trajan." †

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cette œuvre respectable de raison et d'humanité. Que Dieu benisse cet homme de bien!

"J'ai dit que les juges avaient été d'une opinion contraire a cet établissement. Un d'entr'eux, plus jeune que les autres, désespérant moins par conséquent, de l'espèce humaine, a embrassé avec ardeur ces nouvelles idées. Il s'est associé à Caleb Lownes pour toutes les démarches, il l'a aidé des conseils qu'un homme versé dans la jurisprudence pouvait seul donner, et a partagé ainsi le désir, les peines, et le mérite de succès. Ce juge est William Bradford, alors Attorney-général de Pensylvanie, depuis Attorney-général des Etats-Unis, et mort récemment, honoré des regret et de l'estime générale des ses concitoyens. Il mérite sans doute un hommage particulier que je lui rends avec d'autant plus de plaisir, que ce n'est pas une censure pour les autres juges. Car ceux-ci, en se refusant à sanctionner de leur approbation le nouveau système, n'ont été guidés que par le doute sincere que leur expérience leur donnait sur son succès; et ils se sont hâtés de l'aider de tous leur moyens, dès qu'ils en ont vu l'apparence, sans être arrêtés par l'opinion différente qu'ils avaient exprimée; ce qui certes sera un mérite peu commun aux yeux de ceux qui connaissent les erreurs ordinaires de l'amour-propre."—See Voyage dans les Etats-Unis d'Amérique, fait en 1795, 1796, et 1797, par la Rochefoucauld Liancourt, vol. vi. page 262.

* Vid. Hor. lib. i. Sat. 3, and lib. iii. Od. 5.

† See Beccaria, chap. 28.

The wishes of a beneficent sovereign are made known to the people of England by the measures which, with his approbation, are proposed through his ministers in Parliament. The clemency manifested again and again by the person who now sits on the throne justifies me in the hope, that if the times were more quiet, and if a proposal were made for men duly qualified to be employed in reforming our Penal Code, no obstacle would be thrown into the way of such reform by the will of the monarch. Be this as it may, you and I, dear Sir, shall ever deplore the causes which prevented Mr. Fox from having any oportunity to direct the whole force of his mind to the redress of what appear to me our most indisputable and most intolerable grievances.*

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* Upon reading the third chapter in the eighth book of Lord Bacon de Augmentis Scientiarum, I had the satisfaction to find, that in many respects he held the same opinions which I do, upon the qualifications of legislators, the danger of inflicting capital punishments by the aid of harsh interpretations and strained analogies, and the methods which ought to be pursued in the correction of laws.

"Qui de legibus scripserunt, omnes vel tanquam philosophi, vel tanquam jurisconsulti, argumentum illud tractaverunt. Atque philosophi proponunt multa, dictu pulchra, sed ab usu remota. Jurisconsulti autem, suæ quisque patriæ legum, vel etiam Romanarum, aut Pontificiarum, placitis obnoxii et addicti, judicio sincero non utuntur, sed tanquam e vinculis sermocinantur. Certe cognitio ista ad viros civiles proprie spectat; qui optime norunt, quid ferat societas humana, quid salus populi, quid æquitas naturalis, quid gentium mores, quid rerum publicarum formæ diversæ; ideoque possint de legibus, ex principiis et præceptis, tam æquitatis naturalis, quam politices, decernere."

I will produce a few of the aphorisms which follow.

"Durum est torquere leges, ad hoc, ut torqueant homines. Non placet igitur extendi leges pœnales, multo minus capitales, ad delicta nova."—Aph. 13.

"Statuta, quæ manifesto temporis leges fuere, atque ex occasionibus reipublicæ tunc invalescentibus natæ; mutata ratione temporum, satis habent, si se in propriis casibus sustinere possint: præposterum autem esset, si ad casus omissos ullo modo traherentur."—Aph. 15.

"Consequentiæ non est consequentia; sed sisti debet extensio intra casus proximos; alioqui labitur paulatim ad dissimilia, et magis valebunt acumina ingeniorum, quam auctoritates legum."—Aph. 16.

Keener too must be our mortification, because in this arduous but glorious atchievement, he might have called in the aid of

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"At vetustiora exempla caute et cum delectu recipienda; Decursus siquidem ætatis multa mutat, ut quod tempore videatur antiquum, id perturbatione et inconformitate ad præsentia, sit plane novum."—Aph. 24.

In curiis prætoriis et censoriis.

"Habento curiæ censoriæ jurisdictionem et potestatem, non tantum nova delicta puniendi, sed etiam pœnas a legibus constitutas pro delictis veteribus augendi, si casus fuerint odiosi et enormes modo non sint capitales."—Aph. 34.

"Rubricæ sanguinis ne sunto; nec de capitalibus, in quibuscunque curiis, nisi ex lege nota et certa, pronunciato. Indixit mortem Deus ipse prius; postea inflixit. Nec vita eripienda nisi ei, qui se in suam vitam peccare prius nosset."—Aph. 39.

"Dicit Propheta; pluet super eos laqueos. Non sunt autem pejores laquei, quam laquei legum, præsertim pœnalium; si numero immensæ et temporis decursu inutiles, non lucernam pedibus præbeant sed retia potius objiciant."—Aph. 53.

"Duplex in usum venit statuti novi condendi ratio. Altera, statuta priora circa idem subjectum confirmat et roborat; dein nonnullo addit aut mutat. Altera abrogat et delet cuncta, quæ ante ordinata sunt, et de integro legem novam et uniformem substituit. Placet posterior ratio. Nam ex priore ratione, ordinationes deveniunt complicatæ et perplexæ; et quod instat agitur sane, sed corpus legum interim redditur vitiosum. In posteriore autem major certe est adhibenda diligentia, dum de lege ipsa deliberatur; et anteacta scilicet evolvenda et pensitanda; antequam lex feratur; sed optime procedit per hoc legum concordia in futurum."—Aph. 54.

"Erat in more apud Athenienses, ut contraria legum capita (quæ antinomias vocant) quotannis a sex viris examinarentur, et quæ reconciliari non poterant, proponerentur populo, ut de illis certum aliquid statueretur. Ad quorum exemplum ii, qui potestatem in singulis politiis legum condendarum habent, per triennium aut quinquennium, aut prout videbitur, antinomias retractanto. Eae autem a viris ad hoc delegatis, prius inspiciantur et præparentur, et demum comitiis exhibeantur; ut quod placuerit per suffragia stabiliatur et figatur."—Aph. 55.

"Neque vero contraria legum capita reconciliandi et omnia (ut loquuntur) salvandi, per distinctiones subtiles et quæsitas, nimis sedula aut anxia cura esto. Ingenii enim hæc tela est: Atque utcunque modestiam quandam et reverentiam præ se ferat, inter noxia tamen censenda est; utpote quæ reddat corpus universum legum varium et male consutum. Melius est prorsus ut succumbant deteriora, et meliora stent sola."—Aph. 56.

Lord Erskine, Earl Grey, Lord Grenville, Lord Auckland, Lord Holland, Mr. Whitbread, Mr. Windham, the Honourable Mr.

"Obsoletæ leges et quæ abierunt in desuetudinem, non minus quam antinomiæ proponantur a delegatis ex officio tollendæ."—Aph. 57.

"Consultum fuerit in novo digesto legum, vetera volumina non prorsus deleri et in oblivionem cedere, sed in bibliothecis saltem manere; licet usus eorum vulgaris et promiscuus prohibeatur. Etenim in causis gravioribus, non abs re fuerit, legum præteritarum mutationes, et series consulere et inspicere; ac certe solenne est, antiquitatem præsentibus aspergere. Novum autem hujusmodi corpus legum ab iis, qui in politiis singulis habent potestatem legislatoriam, prorsus confirmandum est: ne forte prætextu veteres leges digerendi, leges novæ imponantur occulto."—Aph. 63.

"Optandum esset, ut hujusmodi legum instauratio illis temporibus suscipiatur, quæ antiquioribus, quorum acta et opera retractant, literis et rerum cognitione præstiterint. Quod secus in opero Justiniani evenit."—Aph. 64.

Few enlightened men in this country would assent to Bacon's opinions, as they are stated in Aphorisms twenty and forty-one. The "Curiæ prætoriæ et censoriæ," happily for Englishmen, no longer exist. But the principles and the spirit to which I object, may have silently found their way to other places; and in the act of legislation even their latent, indirect, and partial operation would be dangerous.

What Bishop Warburton says upon some academical regulations injudiciously proposed, and ineffectually attempted by the Duke of Newcastle, may be applied to other and weighter subjects. "Though a multiplication of good laws do nothing against a general corruption of manners, yet the abrogation of *bad* ones greatly promotes reformation."—See Letter 32 of the Correspondence between Hurd and Warburton.

"Nolumus leges Angliæ mutari," though converted into a vague generality in the writings of zealots, and the speeches of declaimers, was in reality the declaration of the lay Barons upon a particular occasion—"when the Prelates in the Parliament of Merton endeavoured to procure an act to alter the common law, and to substitute the canon and civil law in its stead."—See Dagge, vol. i. p. 251.

"The Bishops," says Warburton, "as partizans of the Pope, were for subjecting England to the Imperial and Papal laws, and therefore began with a circumstance most to the taste of the Barons, to legitimate bastards as to succession. The Barons smelt the contrivance, and rejected a proposition most agreeable

Ward, of three Judges whom I forbear to name, of Sir Arthur Pigot, Sir Samuel Romily, Sir James Mackintosh, Mr. Serjeant Lens, Mr. Robert Smith, Dr. Colquhoun, Mr. Francis Hargrave, and, above all, Jeremiah Bentham.*

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to them, for fear of the consequences, the introduction of the Imperial law, whose very genius and essence was arbitrary and despotic power. Their answer shows it: 'Nolumus leges Angliæ mutari." They had nothing to object to the reform, but they were afraid for the constitution." (Letter 84.) The memorable answer of the Barons may supply specious and high-sounding terms, not appropriate and solid principles, for the vindication of those persons who object to the reform of our penal code. The maxim itself may be introduced upon every proposal for the repeal of laws, and if admitted indiscriminately, it would prevent every change however salutary. But in point of fact laws are frequently changed, and the maxim in its popular but just application is confined to encroachments upon the fundamental principles of those rights which are secured to the people by the constitution. The spirit of the words is just the same now, as it was in the Parliament of Merton. They cannot even rhetorically be urged against large and important alterations in our penal system, unless it be shown that the general evil likely to result from such alterations exceeds the general good.

* I have been asked, why, after pointing out by name the persons who seemed to me most qualified for reforming our Penal Code, I declined mentioning such ecclesiastics as might with propriety be employed in preparing for the use of churches a grave and impressive discourse on the authority of human laws; and as other men may ask the same question which my friend did, I have determined, after some deliberation, to insert the substance of my answer in this place.

If the public service of our church should ever be directly employed in giving effect to the sanctions of our Penal Code, the office of drawing up such a discourse as I have ventured to recommend, would, I suppose, be assigned to more than one person. My ecclesiastical superiors will, I am sure, make a wise choice. But they will hardly condemn me for saying, that the best sense expressed in the best language, may be expected from the Bishops of Landaff, Lincoln, St. David's, Cloyne, and Norwich, the Dean of Christ Church, and the President of Magdalen College, Oxford. I mean not to throw the slightest reproach upon other dignitaries whom I have not mentioned. But I should imagine that few of my enlightened contemporaries hold an opinion different from my own upon the masculine under-

"In the multitude of such counsellors" there would have been "substantial WISDOM."*

"Oh! Love the light of wisdom, all ye that be rulers of the people, for she is the brightness of the everlasting light, the un-

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standing of a Watson, the sound judgment of a Tomlin, the extensive erudition of a Burgess, the exquisite taste and good nature of a Bennet, the calm and enlightened benevolence of a Bathurst, the various and valuable attainments of a Cyril Jackson, or the learning, wisdom, integrity, and piety of a Martin Routh.

I have stated, unreservedly and dispassionately, my objections to the exclusive employment of lawyers in the reform of our Penal Code. But let it be observed, that with all my respect for the learning, and all my confidence in the virtues of ecclesiastics, I should be sorry to see *them* take any share in the important task. Some of them might misapply their well-founded notions of morality to a science, which, though it ought never to lose sight of moral obligation, directly and professedly aims at its own peculiar ends by its own peculiar views of public utility. Others, from the habits of studious and retired life, may have met with scanty opportunities for observing the gradations of crimes, and the effects of human penalties affixed to them. A few (I hope a very few) might be too much inclined to severity, from the frequency of insisting upon future rewards and punishments in situations where such topics are salutary and proper, in consequence of their reference to the will of an *unerring* Judge, or, I should rather say, to his laws, as the expression of that will, and to the sanctions of those laws, in happiness as a motive to obedience, and in misery as a restraint from disobedience—but a motive, be it remembered, which human legislators seldom can employ at all, and a restraint which they sometimes do employ inconsiderately or vindictively, with too little of good effect, or too much of evil. All of them might lose a part of the reverence which is now paid to their office, if they were merely suspected of acting in contradiction to the principle of that decorous and humane usage which now restrains Bishops as Peers of Parliament from the exercise of a dubious right to pass sentence in cases of blood, where the contingent praise which they might acquire by lenity in acquittal, is not considered as an equivalent for the contingent blame which they might incur, by seeming rigour in condemnation. To all imperfect and responsible beings, mercy is, perhaps, the most interesting attribute of the Deity. Mercy is the distinguishing characteristic of Christianity. Mercy is the fairest badge of a Christian priesthood.

* See Wisdom, chap. vi. and vii.

defiled mirror of the majesty of God, and the image of his GOODNESS."*

NOTE 17, p. 36.

You will read with satisfaction the character drawn by Silius Italicus, of a good King, who is said by Polybius "πλεῖστον χρόνον ἀπολελαυκέναι τῆς ἰδίας εὐβουλίας,"

"His longo mitis placide dominator in ævo
Præfuerat terris Hieron, tractare sereno
Imperio vulgum pollens, et pectora nullo
Parentum exagitare metu; pactamque per aras
Haud facilis temerare fidem, socialia jura
Ausoniis multus servarat casta per annos."†

In the verses which follow you may see the crimes and the punishments of Hiero's grandson and successor. Let me add, that the odious cruelties inflicted upon unoffending and amiable females in a neighbouring country will make you read with stronger sensibility the following passage:

"Nec jam modus ensibus: addunt
Fœmineam cœdem, atque insontum rapta sororum
Corpora prosternunt ferro. Nova sævit in armis
Libertas, jactatque jugum."‡

NOTE 18, p. 37.

The προφήτης who addressed Alexander, instead of saying ὦ παιδίον, pronounced ὦ παιδίος, and this intentional blunder produced an equivoque not unpleasing to the ear of him who wished to be considered as the son of Jove.§

NOTE 19, p. 38.

"Oculos habuit claros ac nitidos: quibus etiam existimari volebat inesse quiddam divini vigoris: gaudebatque si sibi quis acrius contuenti, quasi ad fulgorem solis, vultum submitteret."‖

* See Wisdom, chap. 6 and 7. † Lib. xiv. lin. 79.
‡ Lib. xiv. lin. 105. Vide Liv. lib. xxiv. par. 26.
§ Vid. Plutarch, vol. i. p. 680. edit. Xyland.
‖ Vid. Suet. in Vit. August. sect. 79.

NOTE 20, p. 38.

"Murmur-mur-mur Gnaden mur-mur."* Does not this anecdote bring to your memory the "verba obscura, suspensa, perplexa, eluctantia, in speciem composita" of Tiberius? †

NOTE 21, p. 38.

See what is told of Diogenes in his interview with Alexander, by Plutarch.‡

NOTE 22, p. 39.

You are well acquainted with these triflers, and perhaps you will not think them ill described by Ovid:

"Nulla quies intus, nullaque silentia parte.
Nec tamen est clamor, sed parvæ murmura vocis,
Qualia de pelagi, si quis procul audiat, undis
Esse solent.
Atria turba tenent; veniunt leve vulgus euntque.
Mistaque cum veris passim commenta vagantur
Millia rumorum: confusaque verba volutant.
E quibus, hi vacuas implent sermonibus aures:
Hi narrata ferunt alio; mensuraque facti
Crescit; et auditis aliquid novus adjicit auctor."§

NOTE 23, p. 42.

Of this virtue we have a striking instance in the negociations between de Wit and Sir William Temple, when they formed the triple alliance. But history abounds with contrary examples. The plain in which Pope Gregory carried on his perfidious negociation with Louis the Debonnair "is called to this day," says Voltaire, "the field of lies; a name which might very properly be applied to many other places where negociations have been carried on."||

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* See Gesner's Isagoge, vol. ii. p. 563.
† Vid. Tacit. Hist. iv. par. 31.
‡ Vol. i. p. 671.
§ Vid. Ovid. Metamoph. lib. 12.
|| See Essay on the Manners and Spirit of Nations, vol. ii. chap. 23.

Note 24, p. 44.

I enter not into the general question upon utility, but shall content myself for the present with expressing my assent to Cicero: "Dubitandum non est quin nunquam possit utilitas cum honestate contendere. Itaque accepimus Socratem exsecrari solitum eos qui primum hæc natura cohærentia, opinione distraxissent. Cui quidem ita sunt Stoici assensi, ut quicquid honestum esset, id utile esse conserent; nec utile quidquam, quod non honestum."*

Note 25, p. 47.

We may describe Mr. Fox as Plutarch has described Marcellus: "Βέβαιον ἄνδρα καὶ τὴν ἀλήθειαν ἀρχὴν μεγάλης ἀρετῆς κατὰ Πίνδαρον ἡγούμενον."†

The words of Pindar might have been applied by Mr. Fox to his own political engagements:

"Ἀρχὰ μεγάλας ἀρετᾶς ὕνασ' Ἀλάθεια,
Μὴ Πταίσῃς ἐμὰν σύνθεσιν τραχεῖ
Ποτὶ ψεύδει."‡

In his public conduct he was superior to Aristides, if credit be due to Theophrastus, who, after commending the conduct of the Just Athenian in private life, and towards his fellow citizens, accuses him,

"Ἐν τοῖς κοινοῖς πολλὰ πρᾶξαι πρὸς τὴν ὑπόθεσιν τῆς πατρίδος ὡς συχνῆς ἀδικίας δεομένην."§

Bayle, who quotes this passage, is fair enough to refer his reders to the more favourable account which Cicero gives of Aristides, in lib. iii. de Officiis. There is, however, too much truth in what Bayle has said concerning the religion of a sovereign, in note H. on the article Agislaus the second.

Note 26, p. 48.

In Lactantius de vero Cultu,|| we have some verses of Lucilius,

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* De Officiis, lib. iii. par. 3.
† In vit. Marii.
‡ See Pindar. Fragm. by Schneider, p. 99.
§ Vid. Plutarch. in vit. Aristid.
|| Lib. vi. par. 5.

which present to us the properties of virtue in a summary view. Patriotism, of course, is not omitted.

"Commoda præterea Patriæ sibi prima putare." This virtue Mr. Fox practised, and in such a manner, too, as not to have incurred the serious and just complaint of Lactantius against the excesses and abuses of patriotism. His words ought to be deeply engraven upon the memories and hearts of all statesmen. "Sublata hominum concordia, virtus nihil est omnino. Quæ sunt enim patriæ commoda, nisi alterius civitatis aut gentis incommoda? Id est, fines propagare, aliis violenter ejectis; augere imperium; vectigalia facere majora. Quæ omnia non utique virtutes, sed virtutum sunt eversiones. In primis enim tollitur humanæ societatis conjunctio, tollitur innocentia, tollitur alieni abstinentia; tollitur denique ipsa justitia, quæ dissidium generis humani ferre non potest; et ubicunque arma fulserint, hinc eam fugari et exterminari necesse est. Verum est enim Ciceronis illud: Qui autem civium rationem dicunt habendam, externorum negant; dirimunt hi communem generis humani societatem: qua sublata, beneficentia, liberalitas, bonitas, justitia funditus tollitur."*

Note 27, p. 48.

Political writers very properly apply to the English government a well-known passage in Tacitus: "Cunctas nationes et urbes populus, aut primores, aut singuli regunt: delecta ex his et constituta reipublicæ forma, laudari facilius quam evenire, vel, si evenit, haud diuturna esse potest;"† they refer, also, to a fragment which Nonius on the word *modium* has preserved from the writings of Cicero: "Statuo esse optimè constitutam rempublicam quæ ex tribus generibus illis, regali, optimo, et populari confusa modice," &c. Blackstone, who justly considers the British constitution as a standing exception to the truth of the observation made by Tacitus, does not seem to have been aware that the notion of a mixed form of government was to be found in any other writers of antiquity than the two whose words are above quoted. But it may be of some importance for us to re-

* Edit. Sparke, p. 520. † Annal. lib. iv.

member that Polybius has enlarged upon the subject at the opening of the sixth book Megal. Histor. He expressly states that constitution of a commonwealth to be the best which is composed of the regal, the aristocratic, and the popular form, and he at large illustrates his position by an examination of the Spartan and the Roman governments, which in his opinion partook of each form. Stobaeus, in Sermone 41, gives a long extract from Hippodamus the Pythagorean, in a work, De Republica, where he speaks of monarchy: "Οὐ δεῖ κατὰ πᾶν αὐτῷ χρέεσθαι, μέχρι δὲ τῶ δυνάτω καὶ ποτὶ τὰν πολιτείαν χρησίμω." Of the remaining forms he speaks thus: "τὰν δ' ἀριστοκρατίαν ἐπιπλέον ἐμπλέκεν, τῷ πλείονὰς εἶμεν τὼς ἄρχοντας, καὶ φιλοζήλως διαιθεσθαί ποτ' αὐτοὺς, καὶ πολλάκις ἀντιμεταλαμβάνεσθαι τὰς ἀρχάς· δαμοκρατίαν δὲ ἀναγκαῖον μὲν ἦμεν πάντως· δεῖ γὰρ τὸν πολίταν μέρος ὑπάρχοντα τὰς συμπάσας πολιτείας φέρεσθαί τι ἀπ' αὐτᾶς γέρας· ἐπέχεσθαι δ' ἱκανὼς αὐτὰν δεῖ· θρασὺ γὰρ καὶ προπετὲς τὸ πολὺ πλᾶθος." There can be no difficulty in accounting for the strong preference which a Greek writer would give to the republican as opposed to the monarchical form. But I would wish to contrast Mr. Burke's opinion with that of Hippodamus. Speaking of himself as the writer of an Appeal from the New to the Old Whigs, Mr. Burke says, "He knew nothing in his nature, temper, or faculties which should make him an enemy to any republic modern or ancient. He had studied the form and spirit of republics very early in life, and with great attention. He was convinced that the science of government would be poorly cultivated without that study. But the result in his mind from that investigation has been, and is, that neither England nor France, without infinite detriment to them, as well in the event as in the experiment, could be brought into a republican form; but that every thing republican which can be introduced with safety into either of them, must be built upon a monarchy; built upon a real, not a nominal monarchy, as its essential basis; that all such institutions, whether aristocratic or democratic, must originate from their Crown, and in all their proceedings must refer to it: that by the energy of that main-spring alone those republican parts must be set in action, and from thence must derive their whole legal

effect (as amongst us they actually do) or the whole will fall into confusion."*

But let me return from Mr. Burke to a fifth ancient writer, who spoke of mixed governments, and whose words I have not seen in any modern works upon politics. In the thirty-seventh section of the Bibliotheca, Photius mentions a dialogue which passed between Mænas Patricius and Thomas Referendarius, in which the polity of Plato is censured, and opinions upon government very different from those of the old Greek writers are introduced. The article concludes in these words: "Ἦν δ' αὐτοὶ πολιτείαν εἰσάγουσιν ἐκ τῶν τριῶν εἰδῶν τῆς πολιτείας, δέον αὐτὴν συγκεῖσθαί φασι, βασιλικοῦ καὶ ἀριστοκρατικοῦ καὶ δημοκρατικοῦ· τὸ εἰλικρινὲς αὐτῇ ἑκάστης πολιτείας συνεισαγούσης, κἀκείνην τὴν ὡς ἀληθῶς ἀρίστην πολιτείαν ἀποτελούσης.

Note 28, p. 48.

The treatment Mr. Fox met for some of his speeches in favour of peace would justify me in applying to him a part of what Milton wrote about Enoch:

> "Gray-headed men and grave, with warriors mix'd,
> Assemble, and harangues are heard, but soon
> In factious opposition, 'till at last
> Of middle age one rising, eminent
> In wise deport, spake much of right and wrong,
> Of justice, of religion, truth, and peace,
> And judgment from above: him old and young
> Exploded."†

Note 29, p. 49.

I will quote the passage, because I have again and again read it with the most exquisite delight:

> "Οἱ Φιλόσοφοι ζητοῦσιν, ὡς ἀκήκοα,
> Περὶ τοῦτο δ' αὐτῷ πολὺς ἀναλῶται χρόνος,

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* Burke's Works, Appeal from the New to the Old Whigs, vol. vi. p. 133—4.

† Par. Lost, book xi.

Τί ἐστιν ἀγαθὸν· οὐδὲ εἷς εἴρηκέ πω
Τί ἐστιν· ἀρετὴν και φρόνησίν φασι, καὶ
Πλέκουσι ταῦτα, μᾶλλον, ἢ τί τ' ἀγαθόν.
Ἐν ἀγρῷ διατρίβων, τήν τε γῆν σκάπτων ἐγὼ,
Νῦν εὗρον—εἰρήνη 'στιν—'ὦ Ζεῦ φίλτατε
Τῆς ἐπαφροδίτου, καὶ φιλανθρώπου Θεοῦ.
Γάμους, ἑόρτας, συγγενεῖς, παῖδας, φίλους,
Πλοῦτον, ὑγιείαν, σῖτον, οἶνον, ἡδόνην,
Αὕτη δίδωσι—ταῦτα πάντ' ἂν ἐκλίπῃ,
Τέθνηκε κοινῇ πᾶς ὁ τῶν ζώντων βίος."*

Note 30, p. 51.

I once had the pleasure to meet Dr. Dickson, the late Bishop of Down, to the candour of whose spirit, the sanctity of whose opinions, and the innocency of whose life, Mr. Fox has done justice to in a very masterly epitaph; and if that excellent prelate were now living to read the foregoing statement, I trust that he would not condemn me for thus addressing the shade of our common friend:

"veræ virtutis amator,
Unum hoc maceror, et doleo tibi deesse."

He must be a bigot, or a maniac, that would suspect impiety to lurk in the writer of the following epitaph:

"Under this stone lies interred the mortal remains of the Right Rev. William Dickson, late Bishop of Down and Connor, whose memory will ever be dear to all who were connected with him in any of the various relations of life.—Of his public character, the love of liberty, and especially of religious liberty, was the prominent feature: sincere in his own faith, he abhorred the thought of holding out temptations to prevarication or insincerity in others, and was a decided enemy, both as a bishop and a legislator, to laws whose tendency is to seduce or to deter men from the open and undisguised profession of their religious opinions by reward and punishment, by political advantages, or

* Fragment from the Pyrrhus of Philemon, page 244, edit. Le Clerc.

political disabilities. In private life, singular modesty, correct taste, a most engaging simplicity of manners, unshaken constancy in friendship, a warm heart alive to all the charities of our nature, did not fail to conciliate to this excellent man the affections of all who knew him. But, though the exercise of the gentler virtues which endear and attract was more habitual to him as most congenial to his nature, he was by no means deficient in those more energetic qualities of the mind which command respect and admiration. When roused by unjust aggression, or whatever the occasion might be that called for exertion, his mildness did not prevent him from displaying the most manly and determined spirit; and notwithstanding his exquisite sensibility, he bore the severest of all human calamities, the loss of several deserving and beloved children, with exemplary fortitude and resignation. He was born in February 1745—was married in June 1773, to Henrietta Symes, daughter of the Rev. Jeremiah Symes; was preferred to the bishopric of Down and Connor in December 1783, and died on the 19th of September 1804, deeply regretted by all the different religious sects that composed the population of his extensive diocese; by acquaintances, neighbours, and dependants of every condition and description; by his children, his friends, and his country; and most of all by his disconsolate widow, who has erected this stone to the memory of the kindest husband, and the best of men." C. J. Fox.*

What man of sense would impute levity or profaneness to the mind which conceived such an inscription? Where is the enlightened and orthodox believer who, upon reading it, would not exclaim, "εὐξαίμην ἂν τῷ θεῷ, καὶ ἐν ὀλίγῳ, καὶ ἐν πολλῷ τοιοῦτόν σε γενέσθαι, ὁποῖος κἀγώ εἰμι;"

Note 31, p. 51.

Dr. Johnson was certainly not a latitudinarian. His masculine sense sometimes happily suspended the force of his religious prejudices. The following passage, which I have selected from his character of Dr. Mudge, unites the true spirit of Christian charity with the soundest wisdom. "His principles both of

* See Monthly Magazine, vol. xx. p. 574.

thought and action were great and comprehensive. By a solicitous examination of objections, and a judicious comparison of opposite arguments, he attained what enquiry never gives but to industry and perspicuity—a firm and unshaken settlement of conviction. But his firmness was without asperity, for, knowing with how much difficulty truth was sometimes found, he did not wonder that many missed it."*

You will be glad to see in what terms men not unequal to Johnson in genius, and superior to him in learning, discourage our attempts to solve all difficulties which meet us in the natural and in the moral world, and by discouraging them, to preserve us from the extremes of dogmatism and scepticism.

"Ne curiosus quære causas omnium,
Quæcunque libris vis prophetarum edidit,
Afflata cœlo, plena præsenti Deo:
Nec operta sacri supparo silentii
Irrumpere aude: sed pudenter præteri
Nescire velle quæ magister optimus
Docere non vult, erudita inscitia est."—SCALIGER.

"Qui curiosus postulat totum suæ
Patere menti, ferre qui non sufficit
Mediocritatis conscientiam suæ,
Judex iniquus, æstimator est malus
Suique, naturæque: nam rerum parens
Libanda tantum quæ venit mortalibus,
Nos scire pauca, multa mirari jubet.
Hic primus error auctor est pejoribus.
Nam qui fateri nil potest incognitum,
Falso necesse est placet ignorantiam,
Umbrasque inanes captet inter nubila.
Magis quiescet animus, errabit minus,
Contentus eruditione parabili,
Nec quæret illam, siqua quærentem fugit.
Nescire quædam magna pars sapientiæ est."†

* Boswell's Memoirs of Johnson, vol. iii. p. 333.
† Grotii Epigram, lib. i.

NOTE 32, p. 54.

If Mr. Fox had been asked to what school of eloquence he belonged, he perhaps would have replied in the spirit of an antient speaker who, "percontanti, Theodoreus, an Appollodoreus esset, respondit, ego Parmularius sum."*

NOTE 33, p. 56.

I could wish the merit of Mr. Fox's method to be tried by the opinions of Mr. Hume. "'There is a great prejudice against set speeches, and a man can scarce escape ridicule who repeats a discourse as a school-boy his lesson, and takes no notice of any thing which has been advanced in the course of the debate. But where is the necessity of falling into this absurdity? A public speaker must know beforehand the question under debate. He may compose all the arguments, objections, and answers, such as he thinks will be most proper for his discourse. If any thing new occur, he may supply it from his invention; nor will the difference be very apparent between his elaborate and extemporary compositions. The mind naturally continues with the same impetus or force which it has acquired by its motion; as a vessel, once impelled by the oars, carries on its course for some time, when the original impulse is suspended."

"The great affectation in our modern orators, of extemporary discourses, has made them reject all order and method, which seems so requisite as to argument, and without which 'tis scarce possible to produce an entire conviction on the mind. 'Tis not that one would recommend many formal divisions in a public discourse, unless the subject very evidently offer them. But 'tis easy without this formality, to observe a method, and make that method conspicuous to the hearers, who will be infinitely pleased to see the arguments rise naturally from one another, and will retain a more thorough persuasion than can arise from the strongest reasons which are thrown together in confusion."†

* Vid. Quintilian. lib. ii. cap. 12.
† Hume's Essay on Eloquence, vol. i.

These just observations deserve attention from every public speaker, and from every critic on public speaking. It may be worth while to remark that in describing the little apparent difference between the elaborate compositions and the extemporaneous speeches of an orator, Mr. Hume has unconsciously employed the same beautiful imagery which we meet in Cicero, when he contrasts the sudden effusions of a public speaker with matter prepared in writing. "Si quando in dicendo scriptum attulerit aliquid, cum ab eo discesserit, reliqua similis oratio consequetur: ut concitato navigio, cum remiges inhibuerunt (lege, sustinuerunt *) retinet tamen ipsa navis motum et cursum suum, intermisso impetu pulsuque remorum: sic in oratione perpetua, cum scripta deficiunt, parem tamen obtinet oratio reliqua cursum scriptorum similitudine et vi concitata."†

Another instance of unconscious similitude between an ancient and a modern writer occurs at the moment to my memory, and as I have not seen it noticed in any book you will excuse me for producing it. "Gray," says Johnson, "in his odes has a kind of strutting dignity, and is tall by walking on tiptoe." We meet with a similar thought in Quintilian: "Prima est eloquentiæ virtus, perspicuitas: et quo quisque ingenio minus valet, hoc se magis attollere et dilatare conatur: ut statura breves in digitos eriguntur, et plura infirmi minantur."‡

I will add a third instance. Johnson said of Lord Chesterfield, "He is a wit among lords, and a lord among wits." But he remembered not that Pope had written,

"A wit with dunces, and a dunce with wits."§

Neither of them, perhaps, was conscious that Quintilian had long ago said, "Qui stultis eruditi videri volunt, eruditis stulti videntur."‖

NOTE 34, p. 56.

It may amuse you if I were to divide between Mr. Fox and his great rival most of the properties which Cicero, in what he

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* Epist. ad Attic. lib. xiii. vol. 2.
† De Oratore, lib. i. par. 33.
‡ Quintil. lib. ii. cap. 3.
§ Dunciad, book iv. line 90.
‖ Quintil. lib. x. cap. 7.

calls quasi sylvam, requires from an orator. The first of them, sic dicet, ut verset sæpe multis modis eandem et unam rem, et hæreat in eadem commoreturque sententia; ut sæpe cum iis qui audiunt, nonnunquam etiam cum adversario, quasi deliberet; ut hominum sermones, moresque describat; ut ante occupet, quod videat opponi; ut comparet similitudines; ut utatur exemplis; ut liberius quid audeat; ut irascatur etiam; ut objurget aliquando; ut deprecetur; ut supplicet; ut medeatur; ut a proposito declinet aliquantulum; ut optet; ut exsecretur; ut fiat iis apud quos dicit, familiaris; atque alias etiam dicendi virtutes sequatur; brevitatem, ei res petat. Sæpe etiam rem dicendo subjiciet oculis." The other "sic dicet, sæpe ut irrideat; ut declinet a proposito, deflectatque sententiam; ut proponat quid dicturus sit; ut contra, ac dicat accipi et sentiri velit; ut dividat in partes; ut aliquid relinquat; ut ab eo quod agitur avertat animos; ut ante præmuniat; ut in eo ipso in quo reprehenditur, culpam in adversarium conferat; ut interpellatorem coerceat; ut aliquid reticere se dicat; ut denuntiet, quid caveant. Sæpe supra feret, quam fieri possit. Significatio sæpe erit major, quam oratio. Hoc in genere omnis ejus elucet eloquentiæ magnitudo. Hæc collocata, et quasi structa et nexa verbis, ad eam laudem, quæ orationis propria est, aspirant."*

Note 35, p. 58.

"Hæc Simulatio interim huc usque processit, ut quæ refutare non posset, quasi fastidiendo calcaret."†

Note 36, p. 60.

"Zeno quoque Stoicorum Princeps, non tam rerum inventor fuit, quam novorum verborum."‡

Note 37, p. 61.

Within these late years we have heard much in our Parliamen-

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* Cicero. Orator. vol. i. pag. 162. ed. Gruter.
† Quintil. lib. v. cap. 3. ‡ Cic. de Finibus, lib. iii. par. 2.

tary debates of existing circumstances, when employed to justify seeming or real deviations from general principles. I shall not here repeat the critical objections which you have heard me make to the use of the phrase. But you have yourself lamented the effects of it upon the judgments, or at least in the votes of persons who are in Parliament, and you will not be sorry to read the exposition which a very learned and intelligent Critic has given of the principle that is wrapped up in our modern phrase.

"Prudentiam philosophi politici duplicem faciunt: eam quæ simpliciter prudentia vocatur, et quam ipsi dicunt περιστατικὴν, velut temporum necessitate expressam. Simili ratione dicuntur Senecæ epistola LXVI. quædam prima bona; tanquam gaudium, pax, salus patriæ: quædam secunda in materia infelici expressa; tanquam tormentorum patientia, et in morbo gravi temperantia. Ex hac diversitate, genus duplex officiorum viri prudentis nascitur: officia prima, sive primario suscepta, in quibus emicat ipsa honestas, nulla inhonesti suspicione aut mixtione obscurata: ut quum dives aliquis patriæ aut egenis opes suas impendit: quum vir fortis contra patriæ perduelles stat fortiter in acie: item officia περιστατικὰ, quæ M. Tullius officia ex tempore vertendo nominat, et secunda honesta; quum honestati quam sequeris inest aliquid quod plerunque turpe videatur. Sæpe enim tempore fit, ut quod plerunque turpe haberi soleat, inveniatur non esse turpe. Hujus autem generis officiorum ex tempore, cum in privata vita interdum est usus, ut disputant iidem philosophi: tum multo magis in publicæ rei administratione. Tanti enim est publica salus, ut sapientissimi olim viri dicere ac docere veriti non sint; non esse quidem honesto unquam utile anteponendum: sed statui ita debere; quicquid valde necessarium sit Reip. id fieri honestum, etiam si ante non videretur. Verum heic cautione et attentione magna Politicis est opus: ne prudentiam περιστατικὴν, cui humanum genus sua miseria et vanitas fecit obnoxium, ut recte sentit B. Augustinus, in dolum malum convertant, et illam veteratorum malitiam, quam vir optimus Polybius κακοπραγμοσύνην vocat, et tantopere abominatur. Hodierni politici secunda officia quæ περιστατικὰ vocari diximus a Græcis, nominant Rationem status: qui autem dolos et fraudes nefarias

hoc specioso mantelio hodie obnubunt, ii non pro viris prudentibus, sed pro malitiosis veteratoribus sunt habendi."*

NOTE 38, p. 65.

From the love I bear to my country, and from my remembrance of the important and honourable part it once sustained in the politics of Europe, I have often wished such measures to have been pursued during the late and the present war, as would have justified me in continuing to apply to England a beautiful passage which I have been accustomed to repeat with enthusiastic fondness:

"Ὁ τὴν Ῥώμην ὑποβαλόμενος χρόνος μετὰ θεοῦ τύχην καὶ ἀρετὴν ἐκέρασε καὶ συνέζευξεν, ἵνα ἑκατέρας λαβὼν τὸ οἰκεῖον, ἀπεργάσηται πᾶσιν ἀνθρώποις ἑστίαν ἱερὰν, ὡς ἀληθῶς, καὶ ὀνησιδώραν, καὶ πεῖσμα μόνιμον, καὶ στοιχεῖον ἀΐδιον, ὑποφερομένοις τοῖς πράγμασιν ἀγκυρηβόλιον σάλου καὶ πλάνης, ὥς φησι Δημόκριτος."†

NOTE 39, p. 66.

From present appearances in the political horizon the day I trust is approaching when the downfal of one who has hitherto supposed "summa scelera incipi cum periculo, peragi cum præmio,"‡ will remove the doubts which Tacitus expressed upon the interview between Trasullus and Tiberius. "Mihi hæc ac talia audienti in incerto judicium est, fatone res mortalium et necessitate, an forte volvantur: quippe sapientissimos veterum, quique sectam eorum æmulantur, diversos reperies. Ideo creberrima et tristia in bonos, læta apud deteriores esse. Contra alii fatum quidem congruere rebus putant, sed non e vagis stellis, verum apud principia et nexus naturalium causarum; ac tamen electionem vitæ nobis relinquunt, quam ubi elegeris, certum imminentium ordinem. Neque mala vel bona quæ vulgus putant; multos qui conflictari adversis videantur beatos, ac plerosque quan-

* Vid. Casaubon's Commentary in Polybium, lib. iii. p. 141.
† Vid. Plutarch de fortuna Romanorum, lib. ii. p. 316—17.
‡ Annal. lib. xii. par. 12.

quam magnas per opes miserrimos: si illi gravem fortunam constanter tolerent, hi prospera inconsulte utantur."*

The fall of such a conqueror may reconcile many persons to the belief of a providence administered by secondary causes, and induce them to take a lively interest in the language of Claudian, whose statement of principles and whose conclusion from facts may be properly contrasted with the passage I have just now quoted from Tacitus.

"Sæpe mihi dubiam traxit sententia mentem
Curarent Superi terras, an nullus inesset
Rector, et incerto fluerent mortalia casu.
Nam cum dispositi quæsissem fœdera mundi
Præscriptosque mari fines, tunc omnia rebar
Consilio firmata Dei. * * *
* * * * * * *
* * * * * * *
Sed cum res hominum tanta caligine volvi
Aspicerem, lætosque diu florere nocentes,
Vexarique pios; rursus labefacta cadebat
Religio, causæque viam non sponte sequebar
Alterius, vacuo quæ currere semina motu
Affirmat, magnumque novas per inane figuras
Fortuna, non arte regi: quæ numina sensu
Ambiguo vel nulla putat, vel nescia nostri.
Abstulit hunc tandem Rufini pœna tumultum,
Absolvitque Deos: jam non ad culmina rerum
Injustos crevisse queror: tolluntur in altum
Ut lapsu graviore ruant."†

NOTE 40, p. 68.

This offensive pamphlet has been republished by Mr. Burke himself, but with a milder and more judicious title than it bore, when it was first sent into the world by the impatience and anger of the printer. The insertion of it in the works of that celebrated man must give perpetuity and increased notoriety to the censures contained in it; and therefore calls aloud for pub-

* Tacit. Annal. lib. vi. par. 22. † Claudian. in Rufin. lib. i.

lic and pointed notice from the well wishers of Mr. Fox. "Spreta exolescunt convitia" was a maxim which our friend generally followed under very trying provocations. But the mischievous insinuations, the weighty charges, the bitter reproaches aimed against Mr. Fox himself, against Mr. Adair, and Lord Howick, who were his personal friends, and against other excellent men who adhered to his party, made, as I know from my correspondence with him, a very deep and very painful impression upon his mind. In the writings of Mr. Burke posterity will find the name of Mr. Fox recorded, as of a man who had rushed upon the very threshold of treason, who approved of nearly all the atrocities which disgraced the French revolution, and who not only held, but avowed principles, which, if he should ever have been admitted to power, would have endangered the property of every English gentleman, and might have changed the whole form of the English government. In the second edition no one accusation is omitted, no one reproach is softened, no one prediction of the dreadful consequences which were to ensue from an administration over which Mr. Fox presided, is directly or indirectly qualified. The alterations, as I find upon careful comparison, are few, and merely verbal.

Mr. Burke has prefixed a very elaborate and animated dedication of his work to the Duke of Portland; and in the course of it he tells us "that his own latest judgment owns his first sentiments and reasonings in their full force with regard to persons and things." He represents Lord Lauderdale as acting in the spirit of Lord George Gordon. He says that "Mr. Coke of Norfolk had engaged his share of the aristocratic interest in the new cause of a new species of democracy, which was openly attacking or secretly undermining the system of property by which mankind have hitherto been governed." The introduction of such new matter, and the republication of the former charges against Mr. Fox and his party, are decisive proofs of a most fixed and hostile purpose in the accuser.

Surely no reasonable admirer of Mr. Burke will condemn me for calling the contents of such a pamphlet "*μιαρα καὶ ἀπίθανα ῥήματα.*"*

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* Vid. Æschin. de Corona.

NOTE 41, p. 68.

Mr. Burke in his Appeal to the Old Whigs declares that he never "did impute to Mr. Fox any republican principles, or any other bad principles or bad conduct whatsoever—that Mr. Fox cannot admire the change of one piece of barbarism in France for another and a worse—that his mind was made to better things"—so writes Mr. Burke in 1791. How great was the change wrought in his sentiments when he spoke of the same man in 1793.

NOTE 42, p. 81.

The specific charge brought by Mr. Burke against Mr. Adair was, that with guilt little short of treason, he had been an accomplice with Mr. Fox in opposing the measures of an accredited ambassador at the court of Petersburgh. The specific duties in which Mr. Adair has been engaged for nearly three years, are those of an Envoy at the Courts of Vienna and Constantinople. He in all probability was commissioned to go to Constantinople, because his sovereign approved his conduct at Vienna; and I have not credulity enough to suppose that the English government would have employed the betrayer of his country in trusts so important, at a juncture so perilous. The confidence of the Sovereign completely and visibly refutes the accusations of Mr. Burke. The lot of Mr. Adair is indeed singular, and at the same time highly creditable to his abilities and his honour. He remained at one court, and has since been sent to another, with the approbation of a ministry whose general system he would have opposed in Parliament. He retained the first employment, and accepted the second, without forfeiting the good opinion of the party with which he has long acted, and probably would act again at home. Surely these unusual circumstances justify the large confidence which I know Mr. Fox to have reposed in the good sense and fidelity of our common friend Mr. Adair.

NOTE 43, p. 86.

This charge ought to be supported by direct and even ample quotations from the work itself.

In chapter the seventh of the Annual Register for 1788, nearly eight pages are employed upon the admirable speech which Mr. Burke delivered on the opening of the charge against Mr. Hastings. "The curiosity excited by Mr. Sheridan's speech upon the same occasion, and the attention paid to it by Sir Joshua Reynolds, by Mr. Gibbon, by other literary characters, and by the whole audience, must be within our own recollection" We must therefore be surprised a little that the writer who had done justice, but no more, to Mr. Burke, should be content with speaking of Mr. Sheridan in the following words: "On the thirty-second day of the trial (Tuesday, June the third) Mr. Sheridan began to sum up the evidence, and to apply it in proof of the charge. His speech, which was delivered to an uncommonly crowded audience, was continued the two following days." *

With this statement let us contrast the representation which the same annalist has given of Mr. Sheridan's speech upon the Begums of Oude, in the Annual Register of 1787.

"The subject of this charge was peculiarly fitted for displaying all the pathetic powers of eloquence; and never were they displayed with greater skill, force, and elegance, than upon this occasion. For five hours and an half Mr. Sheridan kept the attention of the House (which from the expectation of the day was uncommonly crowded) fascinated by his eloquence; and when he sat down, the whole house, the members, peers, and strangers, involuntarily joined in a tumult of applause, new and irregular in that house, by loudly and repeatedly clapping with their hands. Mr. Burke declared it to be the most astonishing effort of eloquence, argument, and wit united, of which there is any record or tradition. Mr. Fox said, 'All that he had ever heard, all that he had ever read, dwindled into nothing, and vanished like vapour before the sun.' Mr. Pitt acknowledged, that it surpassed all the eloquence of antient or modern times, and possessed every thing that genius or art could furnish, to agitate or control the human mind." †

It is of importance for us not to forget that the same writer who had been thus liberal of praise to one speech of Mr. Sheri-

* Page 169. † Vide page 150.

dan, was afterwards, in the same work, and upon the same subject, so thrifty of it to another. The fact is very striking indeed; and if that writer was the person whom the public for many years supposed him to be, we can hardly forbear to suspect that jealousy of Mr. Sheridan's growing reputation preceded and produced the difference. In the progress of that jealousy, such a critic upon Mr. Sheridan would not have been very angry with Mr. Burke for speaking of Mr. Fox as one who, "by long practice and slow degrees had risen to be a most brilliant and accomplished debater."

The fidelity of the annalist in one quarter did not desert him, when he minutely detailed what Mr. Fox said in praise of Mr. Burke, after their first and mildest altercation in Parliament upon the French Revolution.

"As soon as Mr. Burke, whose speech was received with great and general applause, sat down, Mr. Fox rose, and said, that his right honourable friend had mixed his remarks upon what he had said with so much personal kindness towards him, that he felt himself under a difficulty in making any return, lest the House should doubt his sincerity, and consider what he might say as a discharge of a debt of compliments. He must however declare, that such was his sense of the judgment of his right honourable friend, and such the estimation in which he held his friendship, that if he were to put all the political information which he had learned from books, all which he had gained from science, and all which any knowledge of the world and its affairs had taught him, into one scale, and the improvement which he derived from his right honourable friend's instruction and conversation were placed in the other, he should be at a loss to decide to which to give the preference." *

The foregoing words do great credit to the candour of Mr. Fox, but in the opinion of the annalist, I suspect, greater still to the abilities of Mr. Burke. You may yourself collect from circumstances who was the person that recorded them—my intention is chiefly, not solely, to prove what he was—just, uniformly to Mr. Burke, but in one instance flagrantly unjust to Mr. Sheridan.

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* See Annual Register, for 1790, page 69.

NOTE 44, p. 87.

When Cato had refused to Cicero the honour of a supplication, which he had granted to his own father-in-law Bibulus, who had just before lost a son, he wrote thus peevishly to Atticus: "Haveo scire Cato quid agat, qui quidem in me turpiter fuit malevolus, dedit integritatis, justitiæ, clementiæ, fidei testimonium, quod non quærebam. Quod postulabam, negavit id."* So far as my memory goes, Mr. Fox, whatever his friends might do, took no part in opposing the pension granted to Mr. Burke. But, for the honour of human nature, I wish that Mr. Fox could have applied to Mr. Burke's criticism upon the debater, what Cicero, upon another occasion, affectionately wrote to Atticus about Cato's political conduct: "Nam quod purgas eos quos ego mihi scripsi invidisse, et in eis Catonem: ego vero tantum illum puto ab isto scelere abfuisse, ut maxime doleam, plus apud me simulationem aliorum, quam istius fidem valuisse."†

NOTE 45, p. 91.

Mr. Fox, as it appeared sometimes through his speeches, and more frequently in his conversation, was most extensively acquainted with the memoirs of distinguished statesmen, and especially of those who have adorned our own country. The advantages which a public speaker may derive from such knowledge are well described by Quintilian: "Neque ea solum quæ talibus disciplinis continentur, sed magis etiam quæ sunt tradita antiquitus, dicta ac facta praclare, et nosse, et animo semper agitare conveniet. Quæ profecto nusquam plura majoraque, quam in nostræ civitatis monimentis reperientur. Hinc mihi illæ justitiæ haustus bibat, hinc sumptam libertatem in causis atque consiliis præstet. Neque erit perfectus orator, nisi qui honeste dicere et sciet, et audebit."‡

NOTE 46, p. 94.

I myself have often heard those speeches, and have been in-

* Epist. ad Attic. 2d, lib. vii.
† Epist. ad Attic. 15. lib. iii.
‡ Lib. xii. cap. ii.

clined to say of them what Plato says of the effect produced by the conversation of Socrates: "Ἐν ἐμοὶ αὐτῇ ἡ ἠχὴ τῶν λόγων βομβεῖ, καὶ ποιεῖ μὴ δύνασθαι τῶν ἄλλων ἀκούειν." *

NOTE 47, p. 94.

Mr. Hume tells us, that "in his time there were about half a dozen speakers who in the judgment of the public had reached very near the same pitch of eloquence, and no man pretended to give any one the preference before the rest." He infers from this, that "none of them had attained much beyond mediocrity in their art;" and he seems to consider "modern eloquence only as good sense delivered in proper expressions." But if he had fortunately heard the three great English speakers who are now no more, he in all probability would have changed his opinion upon "the power of modern speakers to inflame the passions, or to elevate the imagination of their audience." Nothing can be more sagacious or more just, than the following observations, and they particularly deserve to be noticed in our criticism upon the comparative merits of some speakers whom we have been lucky enough to hear. "The principles of every passion, and of every sentiment, are in every man: and when touched properly they rise to life, and warm the heart, and convey that satisfaction by which a work of genius is distinguished from the adulterate beauties of a capricious wit and fancy. And if this observation be true with regard to all the liberal arts, it must be peculiarly so with regard to eloquence; which being merely calculated for the public, and for men of the world, cannot with any pretence of reason appeal from the people to more refined judges, but must submit to the public verdict without reserve or limitation. Whoever upon comparison is deemed by a common audience the greatest orator, ought most certainly to be pronounced such by men of science and erudition." †

The most enthusiastic admirers of Mr. Hume would not be offended if I were to tell them, that on a subject of oratory Cicero agrees with him, and that in the most luminous language

* Crito in fine. † Hume's Essay on Eloquence.

he has set before us the same criteria to which Mr. Hume had appealed.

"Id ipsum est summi oratoris, summum oratorem populo videri. Quare, tibicen Antigenidas dixerit discipulo sane frigenti ad populum, 'mihi cane et Musis;" ego huic Bruto dicenti, ut solet, apud multitudinem, 'mihi cane et populo' dixerim: ut qui audient, quid efficiatur, ego autem cur id efficiatur, intelligam. Credit iis, quæ dicuntur, qui audit oratorem; vera putat, assentitur, probat, fidem facit oratio. Tu artifex, quid quæris amplius? delectatur audiens multitudo, et ducitur oratione, et quasi voluptate quadam perfunditur. Quid habes quod disputes? gaudet, dolet, ridet, plorat, favet, odit, contemnit, invidet, ad misericordiam inducitur, ad pudendum, ad pigendum, irascitur, miratur, sperat, timet: hæc perindæ accidunt, ut eorum qui adsunt mentes verbis, et sententiis, et actione tractantur. Quid est, quod expectetur docti alicujus sententia? Quod enim probat multitudo, hoc idem doctis probandum est; denique hoc specimen est popularis judicii, in quo nunquam fuit cum doctis intelligentibusque dissentio."

Do not suppose that by applying any of the foregoing passage to Mr. Fox, I mean to depreciate his celebrated rival.

But "Divisum imperium cum Jove Cæsar habet." To those who may be inclined to give the preference where I should not give it, I will put the question in another form, and leave them to decide for themselves. "Quando dubium fuisset apud patres nostros eligendi cui patroni daretur optio, quin aut Antonium optaret, aut Crassum? Aderant multi alii; tamen, utrum de his potius, dubitasset aliquis: quin alterum, nemo."*

Note 48, p. 96.

The fact is noticed in the Problems ascribed to Aristotle:

"Διὰ τὶ, ἥδιον ἀκουούσιν ᾀδόντων ὅσα προεπιστάμενοι τυγχάνωσι τῶν μελῶν, ἢ ὧν μὴ ἐπίστωνται; πότερον, ὅτι μᾶλλον δῆλος ὁ τυγχάνων ὥσπερ σκοπῶν, ὅταν γνωρίζωσι τὸ ᾀδόμενον; τοῦτο δὲ ἡδὺ θεωρεῖν· ἢ ὅτι ἡδὺ τὸ μανθάνειν; τούτου δὲ τόδε αἴτιον,

* Vide Cicero, Brut. p. 146. ed. Grut.

ὅτι, τὸ μὲν, λαμβάνειν τὴν ἐπιστήμην, τὸ δὲ, χρῆσθαι καὶ ἀναγνωρίζειν ἐστὶν ἔτι καὶ τὸ σύνηθες ἡδὺ μᾶλλον τοῦ ἀσυνήθους."*

NOTE 49, p. 97.

No man of sense confounds the merit of speeches as they are delivered in Parliament, with that of speeches as sent from the press. If there be errors in the latter, they may be, and ought to be, corrected; if omissions, they may be supplied; if excellencies, they may be improved; and while the general substance and general manners are preserved, every purpose of propriety and fidelity is sufficiently answered. Mr. Burke, though he was often successful in his extemporaneous effusions, very judiciously determined to rest his fame with posterity upon those orations which he had revised with the utmost care before they were printed. But Mr. Fox, it is well known, could not be prevailed upon to bestow the same attention even upon his best speeches. No arguments, founded upon the importance of the subjects, or upon the peculiar fitness of his own matter, to admit amplification and increased force, or upon the examples of Mr. Burke, Demosthenes, Cicero, and other celebrated orators, could overcome this determination, except in two or three instances. This particularity of our friend calls to my mind a difficulty which has often perplexed me in the history of Demosthenes. We know from Plutarch, that the admiration which the Athenians felt and expressed towards Callistratus gave the first impression to the mind of Demosthenes upon the astonishing force of popular eloquence. But it is not quite easy to account for the answer he gave, when he was asked whether Callistratus or himself were the better speaker: "*Ἐγὼ μὲν γραφόμενος, Καλλίστρατος δὲ ἀκουόμενος.*" That he made this answer can hardly be doubted; and in addition to the testimony just now adduced from the Commentary usually but improperly ascribed to Ulpian, we have the declaration of Æsion, who, when desired to give his opinion of the old speakers and his contemporaries, replied, "*ὡς ἀκούων μὲν ἄν τις ἐθάυμασεν ἐκείνους εὐκόσμως καὶ μεγαλοπρεπῶς τῷ δήμῳ διαλεγομένους· ἀναγινωσκόμενοι δ' οἱ*

* Aristot. Problem. sect. xix. artic. 5.

Δημοσθένους λόγοι, πολὺ τῇ κατασκεύῃ καὶ δυνάμει διαφέρουσι." The words of Æsion seem to imply, that great as might be the superiority of Demosthenes to a mere reader, over later orators, they were equal, or at least not very inferior to him in the art of speaking.

As Demosthenes was very unwilling to address his countrymen without preparation, and as the labour he employed upon his speeches before they were delivered, and before they were published, subjected him to the scoff of Pythias, "*ἐλλυχνίων ὄζειν αὐτοῦ τὰ ἐνθυμήματα,*" we are by no means surprised that, in the estimation of Cicero, Quintilian, and all the critics of antiquity, they procured him the praise of being nearly a perfect orator. He is said by Lucian, (ad indoctum) to have transcribed the history of Thucydides seven times, and, in some of my papers I have stated, as well as I could, the extent in which our orator is to be considered as the imitator of Demosthenes. Hermippus, as we learn from Plutarch, had met with some anonymous testimony that Demosthenes, with very happy effect, attended the lectures of Plato; and Dionysius of Halicarnassus, in that part of his *τέχνη* which treats "*περὶ τῶν ἐν μελεταῖς πλημμελουμένων,*" points out some instances in which "*συναγωνίζεται κατὰ μίμησιν τὴν Πλάτωνος.*" * So intent was he upon giving the utmost perfection to his style, that he is reported by Ctesibius "*παρὰ Καλλίου τοῦ Συρακουσίου, καὶ τίνων ἄλλων τὰς Ἰσοκράτους τέχνας καὶ τὰς Ἀλκιδάμαντος κρύφα λαβὼν καταμαθεῖν.*"†

As to the judgment passed by Theophrastus that Demosthenes was a speaker "*ἄξιος τῆς πόλεως,*" and Demades, "*ὑπὲρ τὴν πόλιν,*" it refers only to extemporaneous effusions in which Demades, from the natural vigour of his mind, and from habit, had confessedly the superiority. The unrivalled excellence of the speeches written by Demosthenes is indisputable. But the difficulty to you and me is, that in the art of delivering them he should have been excelled by Callistratus, and equalled by any other speakers of Greece. For we know that the "*τάχος τῆς ἐπαγγελίας αὐτοῦ,*" was admired—that he took the utmost pains to conquer the natural imperfections of his speech—that he de-

* Edit. Syllburg, p. 61. † Plutarch. in Vit. Dem.

claimed before a "μέγα κάτοπτρον" which he kept at home—that after seeing the skill of Satyrus in dumb shew, he thought "τὸ μηδὲν εἶναι τὴν ἄσκησιν, ἀμελοῦντι τῆς προφορᾶς καὶ διαθέσεως τῶν λεγομένων"*—that Cicero, in his Orator, declares him "tribuisse primas et secundas, et tertias actioni"—that, according to Quintilian, "eam videri possit, non præcipuam, sed solam judicasse"—that he studied the art with the aid of Andronicus the player—that, in order to correct some unbecoming motions in the shoulders, he stood, while he was speaking, "in angusto quodam pulpito," where "hasta humero dependens immineret"—and, finally, that when some Rhodians, who had been reading his speech "de Corona," expressed their admiration of it to Æschines, he replied "quid si ipsum audiissetis."† The testimonies in favour of his industry and anxiety to pronounce his speeches with effect are almost as numerous, and quite as decisive, as those which inform us of the labour he employed in the choice of matter, and in the decorations of style. I know not, then, whether his concession in favour of Callistratus is to be ascribed to his modesty, or whether it was made at some early period when he had not attained the excellence which he afterwards reached, and for which he is celebrated by the unanimous voice of antiquity.

NOTE 50, p. 97.

"Tantum abest," says Cicero, "ut nostra miremur, ut usque eo difficiles ac morosi simus, ut nobis non satisfaciat ipse Demosthenes; qui quanquam unus eminet inter omnes in omni genere dicendi, tamen non semper implet aures meas, ita sunt avidæ et capaces, et semper aliquid immensum infinitumque desiderant."‡ This might be said by Mr. Burke's readers, and yet the most intelligent of them would apply to Mr. Burke what Cicero in another part of his writings states as his opinion of Demosthenes. "Plane quidem perfectum, et cui nihil admodum desit, Demosthenem facile dixeris." I grant that, even in the best speeches of Mr. Burke, men of taste and discernment may find some defects. But I should myself speak of them as Photius does of the faults

* Vid. Plutarch. † Vid. Quintil. Ed. Rollin. lib. xi. cap. 3.
‡ Vid. Ciceron. Orator.

imputed to Isocrates: "*ταῦτα φάμεν πρὸς τὴν ἐν λόγοις αὐτοῦ ἀρετὴν, τὸ ἔκπιπτον ἐκείνης καὶ ἀνόμοιον ἐνδεικνύμενοι· ἐπεὶ πρὸς γε ἐνίους τῶν γράφειν λόγους ἐπαιρομένων, ἀρεταὶ ἂν δόξωσι καὶ τὰ ἐκείνου ἐλαττώματα.*" *

Note 51, p. 101.

"Lenis est, et quadrata, virilis tamen compositio." †

Note 52, p. 104.

See what Mr. Burke says in the Letter to a Member of the National Assembly, about "the royal name used by the French as a sort of navel-string to nourish their unnatural offspring from the bowels of royalty itself."

In his Letter to the Duke of Bedford he says, "Revolutionists unplumb the dead for bullets to assassinate the living."—"A sort of National Convention nosed Parliament in the very seat of its authority."—"The Revolution harpies of France, sprung from night or hell, or from that chaotic anarchy which generates equivocally 'all monstrous, all prodigious things,' cuckoo-like, adulterously lay their eggs, and brood over and hatch them in the nest of every neighbouring state." They who read Virgil's description of the harpies will acknowledge the taste of the poet, and lament the want of it in Mr. Burke, when he talks of "obscene harpies fluttering over our heads, and sousing down upon our tables, and leaving nothing unrent, unrifled, unravaged, unpolluted with the slime of their filthy offal." They will be disgusted when they read, "the Duke of Bedford is the Leviathan among all the creatures of the Crown; he tumbles about his unwieldly bulk—he plays and frolicks in the ocean of the royal bounty.—His ribs, his fins, his whalebone, his blubber, the very spiracles through which he spouts a torrent of brine against his origin, and covers me all over with the spray."

Again, "The only question of their deep philosophers and brave sans-culottes will be that of their Legendre, or some other of their legislative butchers, How he cuts up? How he tallows

* Vid. Phot. Biblioth. Cod. clix.
† Vid. Quintilian, lib. ii. cap. 5.

in the cawl or on the kidneys? Is it not a singular phenomenon, that whilst the sans-culotte carcass-butchers, and the philosophers of the shambles, are pricking the dotted lines upon his hide, and like the print of the poor ox that we see in the shop windows at Charing-cross, alive as he is, and thinking no harm in the world, he is divided into rumps, and sirloins, and briskets, and into all sorts of pieces for roasting, boiling, and stewing, that all the while they are measuring him, his Grace is measuring me."

If upon other occasions Mr. Burke had not given other and happier proofs of his intellectual powers, I should be compelled to say of him, as in a Letter to a Member of the National Assembly, he justly said of Rousseau: "Burke, a writer of great force and vivacity, is totally destitute of taste in any sense of the word." But I do not say so, because his excellencies are far more splendid, and his defects far more venial, when he wrote at other times upon other subjects.

NOTE 53, p. 105.

Of Mr. Burke's best speeches I do not speak too highly when I say, that "*φῶς τῷ ὄντι ἴδιον τοῦ νοῦ τὰ καλὰ ὀνόματα.*" But I am under the necessity of observing, that in his Letter to the Duke of Bedford, and in a few, I am glad to say very few, passages in the pamphlets he wrote upon the affairs of France, he fell into the fault which has been properly charged upon an ancient writer, who in splendour of imagination was equal to Mr. Burke. "*Τὸν Πλάτωνα οὐχ ἥκιστα διασύρουσι πολλάκις ὥσπερ ὑπὸ βακχείας τινὸς τῶν λόγων, εἰς ἀκράτους καὶ ἀπηνεῖς μεταφορὰς καὶ εἰς ἀλληγορικὸν στόμφον ἐκφερόμενων.*"*

Though I think these words of Longinus strictly applicable to several passages in the writings of Mr. Burke, I would not be understood to assent implicitly to the strictures of that great critic, or to those of Dionysius of Halicarnassus, upon the works of Plato. When scholars read what Dionysius has written on the style of Plato, in his Dissertation on the *Δεινότης* of Demosthenes,† and in the Epistle to Pompey,‡ they will do well to bear in

* Longin. sect. 32. † P. 166. edit. Sylburg. ‡ P. 128.

mind the learned and just observation of Wyttenbach: "Dialogum primus Zeno Eleates scripsisse fertur: Plato ad dramatis formam redegit, secutus poetas tragicos, comicos, mimicos: quod prosam philosophiæ rationem, nimium a vetere poeseos usurpatione ac similitudine avulsam, proprius ad eam denuo revocandam censeret. Hinc varietas dialogorum in genere, sublimi, vel tenui, ut item poematum. Quæ observatio valet adversus Dionysium Halicarnasseum, hereditario rhetorum odio, Platonis scripta reprehendentem."

NOTE 54, p. 105.

I never shall admit that Mr. Burke, when he defended the French monarchy, meant to plead the cause of despotism. I agree with him in his general opinion, that the constitution of France could have been preserved, and in his ardent wish that it had been reformed only, though upon the extent of that reform we might sometimes have differed, I remember that Rousseau advised the Poles not to subvert, but to amend their constitution; and if days more evil than the present should overtake this country (which Heaven avert), I trust that every leader and every follower of every class which deserves the name of an English party, may hold, disseminate, enforce, and act upon similar principles. My objection is, to the exaggerated and peremptory language in which Mr. Burke described the state into which France must necessarily be plunged after the Revolution; and upon this subject we may already say with Pindar:

"Ἀμεραι δ' ἐπίλοιποι
Μάρτυρες σοφώτατοι." *

With Mr. Burke's positive and angry predictions, you will be glad to compare the more concise and temperate language of Cicero, about Cæsar and Pompey: "Neutri Σκοπός est iste, ut nos beati simus. Uterque regnare vult. Hæc, a te invitatus, breviter exposui; voluisti enim me quid de his malis sen-

* Olymp. 1.

tirem ostendere. Προθεσπίζω igitur, non ariolans uti illa cui Nemo credidit, sed conjectura prospiciens.

"Jamque mari magno.
Non multo, inquam, secus possum vaticinari." *

NOTE 55, p. 105.

You and I, dear Sir, in common with many of our wisest and best friends, shall never cease to lament the fierce and odious animosities which, during the late war, disturbed the comforts of private life, and which owed, I fear, much of their malignity to the popularity of Mr. Burke's writings. But the evil was not confined to this country. Let us hear what a great scholar says of it in his tribute to the memory of the very learned Santenius: "quanquam hæc fuit non tam ipsius culpa, quam temporum, quorum tanta erat vis, ut non modo homines, alios ab aliis, etiam conjunctissimos disjungerent, sed singulis quoque errorem objicerent, et sibi ipsos dissimiles, ex mitibus duros, et lenibus asperos redderent." †

NOTE 56, p. 106.

See Monthly Review, for May, 1796.

In addition to the merit of very fine writing, this grave and judicious critique is worthy of serious attention, I do not say implicit assent, particularly where the author adverts "to the change, not perhaps in Mr. Burke's opinions, but in the general turn and complexion of his mind, to his enumeration of his services," in which he is said "to have altogether overlooked the greatest and most meritorious of them all, resistance to the claims of unjust dominion, and to that unhappy war which severed America from the British Empire—to another curious change in his mind, when, in speaking of the reforms to which he was instrumental in 1781, he dwelt with great force on the indirect, though most salutary effects, of those measures, in quieting the minds of the people, while he studiously kept out of sight their

* Lib. viii. ad Attic. Epist. 11.

† Vid. Relationes breviores in vol. iii. par. 3, of the Bibliotheca Critica, p. 107.

more immediate, and, if possible, more important consequences, in securing public liberty." "He seems," says the Reviewer, "as if ashamed of his exertions for freedom. In pursuing the detail of his pretensions, we find him displaying his late supposed services to the monarchy and the aristocracy, with a triumph almost equal to the solicitude with which he labours to hide and palliate his former glorious exertions for the people. On the late services he professes to rest his title to national gratitude; to them he is inclined to trust his fame and character with posterity. They form the chief, and almost the sole subject, of that extraordinary contrast which he draws between his own merits and the supposed demerits of the founder of the house of Russell." The contrast is called extraordinary, because, as the Reviewer thinks, "it is wholly impertinent to the subject in discussion, most dangerous in its spirit and tendency, and without foundation in historical truth. If it had been only digression, it might have escaped without animadversion. But it is liable to more serious objections. By exhibiting an odious and detestable picture of the means by which great hereditary fortunes have been raised, it is calculated to change the respect of the multitude for property, into disgust—to let loose their enraged passions on that wealth which is the object of their perpetual envy, and to lend even to rapine itself, some of the features and lineaments of justice. Mr. Burke is not charged with intending to produce any of those effects;" but the Reviewer adds, that "he who suffers himself to be hurried by the rage of his passions, of which the consequences may be so extensively mischievous, cannot be acquitted of at least an imprudence, almost as pernicious as malevolence itself."

I am very glad to have my own opinion upon the spirit and tendency of Mr. Burke's book, confirmed by the concurrence of the very able Reviewer, whose words I have quoted so largely. And as the authority of Mr. Burke's name may give very dangerous weight to any sentiments which he published, and did not retract, I shall not make any apology to you, my friend, for the length of the quotation. The Review contains a sufficient refutation of the charge brought against the founder of the house of Russell; and before the appearance of that Review my judgment was fixed upon the subject, not only by my recollection of Eng-

lish history, but by a conversation which I had the happiness to hold with a learned counsellor, whose knowledge upon these subjects is more extensive and more accurate than that of the Reviewer himself. The accusation is not only unsupported, but directly and entirely confuted by events, and successions of events, as they are related in our history; and whatsoever may be my respect for the general veracity of Mr. Burke, I have never been able to conquer most uneasy suspicions, when upon a topic so interesting to the honour of a great family, and to the feelings of its illustrious representative, I find Mr. Burke contented with making such a reference as occurs in his pamphlet:

"My claim," says he, "to pension, had not its fund in the murder of any innocent person of illustrious rank, or in the pillage of any body of unoffending men. His grants were from the aggregate and consolidated funds of judgments iniquitously legal, and from possessions voluntarily surrendered by the lawful proprietors with the gibbet at their door." *

In support of an allegation so unexpected by the public, and so important to the characters of the dead, and the feelings of the living, should we not require an accurate detail of facts, or specific references to some books in which that detail might be found? Pray mark the only reference which Mr. Burke has employed, and remember that it points to the imputed murder of an innocent person of illustrious rank. "See," says Mr. Burke, in his note, "the history of the melancholy catastrophe of the Duke of Buckingham, temp. Henry VIIIth."

Rashness and imprudence may have led a common writer to refer in this way: but I cannot conceive that malevolence or cunning could have suggested any thing worse. In some respects, I must, in justice to Mr. Burke, express my dissent from the Reviewer. Mr. Burke does not keep out of sight other parts of his conduct, some of which in my opinion, and all of which in his own, were meritorious. In page 25 he speaks of those services, in which "for fourteen years without intermission, he had shewn the most industry, and had the least success, on the affairs of India—services for which he professes to value himself, most for the importance, most for the labour, most for constancy and perseverance in the pursuit: and services which others might

* Letter to a Noble Lord, p. 42.

value most for the intention."* We may easily conceive why Mr. Burke laid the greatest stress upon these services, even in preference to others which he had performed for the people at large. The judgments of men are, I know, very different upon the merits of those services, and the motives which actuated Mr. Burke. I meddle not with that controversy: but I am bound to state, that the Reviewer was mistaken in saying, that "Mr. Burke had overlooked what appeared to him (the Reviewer) the greatest and most meritorious of them all." Let Mr. Burke speak for himself:

"My endeavour," says he, "was to obtain liberty for the municipal country in which I was born, and for all descriptions and denominations in it. Mine was to support with unrelaxing vigilance every right, every privilege, every franchise in this my adopted, my dearer, and more comprehensive country; and not only to preserve those rights in this chief seat of empire, but in every nation, in every land, in every climate, language, and religion in the vast domain that is still under the protection, and the larger that was once under the protection, of the British Crown."

This, surely, is not quite the language of a man who was ashamed of his exertions for public freedom, whatsoever might be the comparative merit which his own judgment would have assigned to those exertions, and his more recent, and, as the Reviewer calls them, his supposed services, to the monarchy and the aristocracy. I hold even those services to be very great, though accompanied at the time by a very deplorable and very unjustifiable inattention, and I had almost said insensibility to the rights of the people.

As you know that the late Duke of Bedford was the political, as well as the personal friend of Mr. Fox, you will not blame me for the length of this note. But if the person who wrote the sketch of Mr. Fox's character should chance to see the pains I have employed upon the oversight of the Reviewer, he will meet with one very strong reason for believing that, without pretending to the merit of proselytism, I have some regard for truth—that my impartiality towards Mr. Burke is at least equal to his

* Page 27.

own, and that my caution in one instance is greater than that of the Reviewer happened to be.

Note 57, p. 106.

"The British constitution is no simple, no superficial thing, nor to be estimated by superficial understandings. It may have its advantages pointed out to wise and reflecting minds, but it is of too high an order of excellence to be adapted to those which are common. It takes in too many views, and makes too many combinations, to be so much as comprehended by shallow and superficial understandings. Profound thinkers will know it in its reason and spirit; the less inquiring will recognize it in their feelings and their experience." *

Mr. Burke's opinion upon the mysteriousness of government, and the general incapacity of the governed to estimate the merit of kings and ministers, resembles the language of Williams, Archbishop of York and Lord Keeper, when he was vindicating James against the remonstrances of the Commons in 1672:

"As the sun in the firmament appears to us no bigger than a platter, and the stars are but as so many nails in the pommel of a saddle, by reason of the enlargement and disproportion between our eye and the object, so is there such an unmeasurable distance between the deep resolution of a prince, and the shallow apprehensions of common and ordinary people, that as they will ever be judging and censuring, so they must needs be obnoxious to error and mistake."

The eloquence of Williams is less splendid than Mr. Burke's. But the tenets of both will appear equally offensive to English subjects in the nineteenth century.

Note 58, p. 111.

You will not be displeased with some verses of Grotius on the pursuit of public honours:

"Rebus gerendis, publicisque commodis,
Natus petendis, hunc honoribus modum

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* Appeal from the New to the Old Whigs.

Prescribe, temet ut offeras, non ingeras.
Ambire semper, magna confidentia est;
Ambire nunquam, deses arrogantia est." *

NOTE 59, p. 111.

Let us say of our friend as Tacitus said of Helvidius Priscus: "Civis, Senator, Maritus, amicus, cunctis vitæ officiis æquabilis, opum contemptor, recti pervicax, constans adversus metus. Erant quibus famæ appetentior videretur, quando etiam sapientibus cupido gloriæ novissima exuitur." †

NOTE 60, p. 113.

In speaking of Mr. Burke's predictions about France, I have quoted a passage from one of Cicero's letters, in which he writes very modestly about his own prophecies. As I have now imputed something like prediction to Mr. Fox, upon a subject where events have proved his sagacity, I shall take the liberty of observing to you that Cicero, upon other occasions, described the results of his own experience and reflections as a sort of divination: "Pulchre igitur Conscientia sustentor, cum cogito me de Republica certe nunquam nisi divine cogitasse." ‡

"Cui quidem Divinationi hoc plus confidimus, quod ea nos nihil in his tam obscuris rebus tamque perturbatis unquam omnino fefellit. Dicerem quæ ante futura dixissem, ni vererer, ne ex eventis fingere viderer." § Cornelius Nepos bears his testimony to the foresight of Cicero: "Ei rei sunt indicia * * * * * * sexdecim volumina epistolarum, ab consulatu ejus usque ad extremum tempus ad Atticum missarum: quæ qui legat, non multum desideret Historiam contextam eorum temporum. Sic enim omnia de studiis principum, vitiis ducum, ac mutationibus reipublicæ perscripta sunt, ut nihil in his non appareat; et facile existimari possit, prudentiam quodammodo esse divinationem: non enim Cicero ea solum, quæ vivo se acciderunt,

* Grot. Epig. lib. i. p. 351. † Tacit. Hist. lib. iv. parag. 4.
‡ Epist. ad Attic. lib. x. Ep. 4.
§ Lib. vi. Epist. 6. ad Attic.

futura prædixit; sed etiam quæ nunc usu veniunt, cecinit ut Vates." *

The Letter of Mr. Fox to his constituents, in which he predicts the moral impossibility of conquering France, and a speech in which he afterwards described the consequences of a precipitate alliance with Austria, may be considered as proofs of foresight not very inferior to that skill in divination which Cicero so often ascribed to himself.

Note 61, p. 113.

Why should not Mr. Fox have the benefit of the plea which a judicious and virtuous biographer employs for the late Sir William Jones?

"Of the French Revolution, in its commencement, he entertained a favourable opinion, and in common with many wise and good men, who had not yet discovered the foul principle from which it sprung, wished success to the struggles of that nation for the establishment of a free constitution; but he saw with unspeakable disgust the enormities which sprung out of the attempt, and betrayed the impurity of its origin." †

Note 62, p. 114.

You remember the magnanimous answer of Phocion, when some measures opposed by him, and recommended by Leosthenes, had met with success, which could not reasonably have been expected: "Ἐρωτηθεὶς εἰ ταῦτα ἤθελεν οὕτω πεπρᾶχθαι, πεπρᾶχθαι μὲν οὖν ταῦτα, ἔφη, βεβουλεῦσθαι δὲ ἐκεῖνα." ‡

The failure of certain measures upon the continent, of which Mr. Fox did not approve, during the late war, gave him no opportunity for replying, as Phocion did. But, if such an opportunity had occurred, he would not have wanted firmness to make such a reply, partly from confidence in his own judgment, and partly from joy at the success of our country, and its allies, though it should have far exceeded all reasonable expectation.

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* Corn. Nepos Vit. Attici, par. 16.

† Lord Teignmouth's Life of Sir William Jones, p. 390.

‡ Plutarch. Apophtheg. vol. ii. p. 188. edit. Xyland.

NOTE 63, p. 116.

"For every war," says Mr. Gibbon, "a motive of safety or revenge, of honour or zeal, of right or convenience, may be found in the jurisprudence of conquerors." * But Mr. Fox held the sounder opinion of Caius Pontius: "Justum est bellum, Samnites, quibus necessarium, et pia arma quibus nulla nisi in armis relinquitur spes." † He would have acted in conformity with this principle; but he lamented as I do the application of the terms just and necessary, to those wars which, in his opinion and my own, might have been avoided.

NOTE 64, p. 116.

The mind of Mr. Fox was strongly impressed with this important caution: "*τοῦ πολέμου τὸν παράλογον ὅσος ἐστὶ, πρὶν ἐν αὐτῷ γενέσθαι, προδιάγνωτε· μηκυνόμενος γὰρ φιλεῖ ἐς τύχας τὰ πολλὰ περιίστασθαι.*" ‡

NOTE 65, p. 116.

Mr. Fox might have said with more truth and more propriety than Appius Claudius Crassus, "Nihil se, neque privatum, neque in magistratibus, quod incommodum civibus suis esset, scientem fecisse: nec ullum dictum factumve suum contra utilitatem vestram, (etsi quædam contra voluntatem fuerint) vere referri posse." §

NOTE 66, p. 117.

"In Pace, ut sapiens, aptarit idonea Bello." ‖

NOTE 67, p. 117.

"Finis vitæ ejus nobis luctuosus, amicis tristis, extraneis etiam ignotisque non sine cura fuit. Vulgus quoque, et hic aliud

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* Cap. 65. † Liv. lib. ix. par. 1.
‡ Thucydid. lib. i. par. 78. § Liv. lib. vi. par. 40.
‖ Hor. Sat. ii. lib. 2.

agens populus, et ventitavere ad domum, et per fora et circulos locuti sunt: nec quisquam audita morte Agricolæ, aut lætatus est, aut statim oblitus est."*

Dio Cassius makes a similar remark on the death of Agrippa: "*οὐκ ἴδιον τοῦτο τὸ παθὸς τῇ τοῦ Ἀγρίππου οἰκίᾳ, ἀλλὰ καὶ κοινὸν πᾶσι τοῖς Ῥωμαίοις ἐγένετο.*"†

Note 68, p. 117.

When I look back to the long and eventful period during which Mr. Fox was excluded from power, and to the unfortunate result of the measures pursued by other statesmen, I cannot help applying to him the distich, which Demosthenes a little before his death wrote down in a kind of pocket-book, and which the Athenians afterwards inscribed under the statue of their injured countryman:

"*Εἴπερ ἴσην γνώμῃ ῥώμην, Δημόσθενες, εἶχες·*
Οὐ ποτ' ἂν Ἑλλήνων ἦρξεν ἄρης μακεδών."‡

Note 69, p. 117.

Mr. Hume, in part of a very philosophical dialogue, has with great ingenuity drawn a contrast between the old Athenians and the modern French. I would beg leave to notice a very marked point of resemblance between them, in the unquiet spirit which both indulged in politics, and which, as it was seen in the Athenians, has been well described in the speech of the Corinthian ambassadors: "*Εἴτις ξυνελὼν φαίη πεφυκέναι ἐπὶ τῷ μήτε αὐτοὺς ἔχειν ἡσυχίαν, μήτε τοὺς ἄλλους ἀνθρώπους ἐᾶν, ὀρθῶς ἂν εἴποι.*"§

Note 70, p. 117.

Since I wrote the above passage Spain has made a noble effort to recover her independence, and set an example which I hope will be vigorously and successfully followed by the other states of Europe.

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* Tacitus in Vit. Agric.
† Dio Cassius, lib. 54.
‡ Vid. Phot. Biblioth. Cod. 265.
§ Thucyd. lib. i. par. 70.

"Ille dies primus docuit, quod credere nemo
Auderet Superis, Martis certamine sisti
Posse ducem Lybiæ."*

Napoleon seems, as was said of Philip, "μεθύειν τῷ μεγέθει τῶν πεπραγμένων."† But I trust that, instead of meeting with Philip's success, he will in the consequences of his own rash and rampant ambition experience the justness of Hannibal's observation: "Non temere incerta casuum reputat, quem Fortuna nunquam decepit."‡ Let us not despair, The people who have opposed themselves to this mighty conqueror "virtute pares, necessitate, quæ ultimum ac maximum telum est, superiores sint."§ May the Sovereign, the Parliament, and the people of England, sympathizing in a common and just cause, hereafter have occasion to exclaim, "En unquam ille dies futurus erat, quo vacuam hostibus Hispaniam visuri essemus. Dedit tandem id Deus—nec desunt qui Deo grates agendas censeant."‖

To arm the hand of a son against the life of a sovereign and a father is an atrocity reserved for Napoleon. Gregory the Fourth encouraged the sons of Louis the Debonnair in dethroning their parent. Urban the Second stirred up Conrad against the unfortunate Emperor Henry the Fourth. But the rebellion of these unnatural children was not aggravated by an attempt at parricide.

If a virtuous heathen were told of the horrible machinations to which the Prince of Asturias is said to have been instigated, he might be tempted to exclaim, "Proh Dii immortales! cur interdum in sceleribus hominum maximis, aut connivetis, aut præsentis fraudis pœnas in diem reservatis?"¶ But if he were to check for a while the tumults of honest indignation—if he were to reflect upon the dark and "slippery places" in which lawless ambition is often doomed to tread—if he were to feel the smallest reliance upon what yet remains of courage or virtue in an insulted and oppressed world, he might find some consolation in the well-founded observation of Cæsar: "Consuesse Deos immortales, quo gravius homines ex commutatione rerum doleant,

* Sid. Ital. xii. 271.
† Demosth. Philip. 1.
‡ Liv. lib. xxx. parag. 30.
§ Liv. iv. parag. 28.
‖ Lib. xxx. parag. 21.
¶ Cicero pro M. Cœlio.

quos pro scelere eorum ulcisci velint, his secundiores interdum res, et diuturniorem impunitatem concedere." *

Much has been said vauntingly, and much falsely, of that indifference to danger and to death which the French philosophy infused into the French armies. I believe not the fact that the tenets of that philosophy ever were communicated to soldiers. I should not have looked for that effect, even if they had been communicated; and I see causes quite sufficient to account for their valour and their victories in the new and peculiar circumstances of their country, in the divisions, jealousies, and inveterate prejudices of their enemies, in the skill of their generals, in the policy, heroism, and example of their Emperor, in their excellent discipline, in their revolutionary ardour, and in the numberless temptations which the condition of Europe presented to their vanity, ambition, and rapacity. But the Spaniards with whom they are contending are, I hope, actuated by the purest and strongest motives which can influence the human mind. Under the auspices of leaders truly patriotic they will shew what a people can atchieve as opposed to mercenaries—a people fighting for their laws, their independence, their families, their friends, and the religion of their fathers.

"First appearances," says Mr. Hume, "are no where more delusive than in politics;" and the justness of the remark has received fresh illustration from the strange events which have occurred in Spain and Portugal since this note was sent to the press. My opinions, alas! are beginning to languish into mere wishes. In a cause which appeared to me morally sound, and politically important, I am unwilling to despair. But, such measures as we have lately seen opposed to the hosts and the councils of such a foe as Napoleon, afford, I must confess, little encouragement to hope. While, however, the patriot sighs over the dangerous situation of his own country, the Christian will remember with truth, that the detestable court of the inquisition has been crushed under the arm of power, for once lifted up in favour of justice and humanity. But why was the glorious privilege of abolishing that spiritual tyranny abandoned to the policy or the mercy of an invader, who upon this one atchievement

* Cæsar de Bell. Gal. lib. i. p. 18. Delph. edit.

may found a claim to the title of a deliverer? "Fas est et ab hoste doceri." Every year, and, I had almost said, every month, brings before my countrymen some awful warning against the systematic continuance, both of restraints which every incensed sufferer calls intolerance, and of practices, which every disinterested observer knows to be inveterate and pernicious abuses.

Note 71, p. 120.

Plutarch in the life of Demosthenes expresses a doubt whether Demosthenes alluded "*πρὸς τὸν λόγον τοῦ ἀνδρὸς ἢ πρὸς τὸν βίον καὶ τὴν δόξαν.*" I apply the expression to Mr. Fox in reference, not to his parliamentary eloquence, but to his political integrity.

Note 72, p. 120.

I shall save you trouble by setting before you the passage to which Cornelius Nepos refers:

"*Ἦν ὁ Θεμιστοκλῆς βεβαίοτατα δὴ φύσεως ἰσχὺν δηλώσας, καὶ διαφερόντως τὶ ἐς αὐτὸ μᾶλλον ἑτέρου ἄξιος θαυμάσαι· οἰκείᾳ γὰρ ξύνεσει, καὶ οὔτε προμαθὼν ἐς αὐτὴν οὐδὲν, οὔτ' ἐπιμαθὼν, τῶν τε παραχρῆμα δι' ἐλαχίστης βουλῆς κράτιστος γνώμων, καὶ τῶν μελλόντων ἐπιπλεῖστον τοῦ γενησομένου ἄριστος εἰκαστής, καὶ ἃ μὲν μετὰ χεῖρας ἔχοι, καὶ ἐξηγησάσθαι οἷός τε· ὧν δὲ ἄπειρος εἴη, κρῖναι ἱκανῶς οὐκ ἀπήλλακτο· τό, τε ἄμεινον ἢ χεῖρον ἐν τῷ ἀφανεῖ ἔτι προεώρα μάλιστα, καὶ τὸ ξύμπαν εἰπεῖν, φύσεως μὲν δυνάμει, μελέτης δὲ βραχύτητι, κράτιστος δὴ οὗτος αὐτοσχεδιάζειν τὰ δέοντα ἐγένετο.*"—A. ρλη. 75. &c.

"Themistocles manifestam sui ingenii vim certissime demonstraverat, et hac in re multo majore admiratione, quam ullus alius dignus erat. Nam naturali prudentia præditus erat, nec quicquam aut ante aut postea didicerat, quod eam augeret; et rerum improvisarum, cum brevissima deliberatione judex erat præstantissimus, et futurarum, ac eventus ipsarum plerunque optimus conjector; quæ autem in manibus habebat, ea etiam explicare atque exsequi poterat: quorum vero esset imperitus, ab his commode judicandis non erat alienus; quid etiam melius, quidve deterius esset in rebus adhuc obscuris et incertis optime prospiciebat. Utque rem totam paucis expediam; et naturæ

bonitate, et consilii celeritate, vir iste maxime idoneus fuit ad explicandum ex tempore, quæ ad rem facerent, et e re essent."

NOTE 73, p. 121.

"Hæc tibi vera fides quæsiti, Magne, favoris
Contigit, ac fructus: felix se nescit amari."*

NOTE 74, p. 121.

"Is enim denique honos mihi videri solet, qui non propter spem futuri beneficii, sed propter magna merita claris viris defertur et datur."†

NOTE 75, p. 121.

We remember the observation of an illustrious French hero, "that no man appears great before his valet;" and perhaps it may be said with justice of nearly all men distinguished by talents or by station: "Major e longinquo reverentia."‡ But Mr. Fox, "magnæ subnixus robore mentis,"§ was, I think, a splendid exception to the general rule. Such was the superiority of his whole mind to simulation and dissimulation—such the exemption of his temper and manners from petty conceit, and wayward singularity—such the happy medium both of his public and private life "inter abruptam contumaciam et deforme obsequium,"|| that they who approached him oftenest, esteemed him most; and while their regard for him was confirmed, their respect for him was not diminished. Upon reflection, indeed, even their admiration was heightened, when they observed that he who was eminent in great things had the power, without effort, and without art, to please friends, strangers, and domestics, upon all those little occasions on which other men are rarely found to unite simplicity with propriety, and to preserve dignity without indulging self-importance.

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* Lucan. lib. vii.
† Vid. Cicero. Epist. ad familiar. lib. x. Epist. 10 to Plancus.
‡ Tacit. Annal. lib. i. parag. 10. § Martial, lib. i. Epig. 40.
|| Vid. Tacit. Annal. lib. iv. par. 5.

Note 76, p. 122.

Mr. Burke probably would have exulted, if he had known that in the Greek language the καλοκἀγαθοὶ were sometimes opposed τῷ δήμῳ. Poets and Rhetoricians may teach us "malignum spernere vulgus." But the avowal of such a principle would not be very decorous in the legislators of a free country, especially in an age when the progress of knowledge and civilization had lessened the moral differences which, in some degree or other, will always subsist between the higher and lower classes of society.

Note 77, p. 122.

We all know the rapacity of men raised to a high station, not only in Turkey, but in some Christian governments, and we have heard with pleasure that Turgot and Necker in a neighbouring country were exempt from that vice. In our own nation the instances of it are very rare; and I have often thought that our own times presented a glorious spectacle to the Christian world, when the two great rivals of power, Mr. Pitt and Mr. Fox, were known to be neither wealthy, nor desirous of wealth, in a country where property, landed and commercial, has great weight even in public affairs. Mr. Pitt's father was distinguished by his indifference to the acquisition of a fortune; and the impression which this virtue made in other countries may be seen in the following words of a learned foreigner: "Qui Reipublicæ singulisque hominibus officia præstant, non præmiorum spe adducti, sed solo studio recte eque republica agendi, illorum factum est majus quam facta aliorum. Sic Anglus ille Pitt, Comes Chattam laudatur et pro magno viro habetur, qui in omnibus rebus non suam, sed reipublicæ utilitatem spectavit."*

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* Vid. Scheller's Præcepta Styli bene Latini, lib. ii. cap. ii. parag. 2. de Gravitate dicendi.

Note 78, p. 123.

"Ἀρχὰ," said Bias, "δείξει ἄνδρα,"* and the same thought has been expanded by another writer.

"Ἀμήχανον δέ παντὸς ἀνδρὸς ἐκμαθεῖν
Ψυχήν τε, καὶ φρόνημα, καὶ γνώμην, πριν ἂν
Ἀρχαῖσι, καὶ νόμοισιν ἐντριβὴς φανῇ."†

I have often heard it remarked while Mr. Fox was out of power, that he was better qualified to lead a party in opposition, than to hold any high office in the British nation; that it was much easier to object to measures than to plan them; and that Mr. Fox's Parliamentary eloquence was a very equivocal proof of his political wisdom. Luckily for the well-wishers of Mr. Fox, they were at last supplied with an opportunity for bringing his character to the test implied in the maxim of old Bias, and they may with confidence appeal to the judgment of impartial men upon the measures pursued or proposed by Mr. Fox, during the few months he was capable of acting for his country in 1806.

Note 79, p. 123.

I enter not into the momentous question which is now agitated about the dominion of the seas. But if you wish to see a clear and concise statement of the Thalassocracy exercised in different times by the states of antiquity, you will find it in Casaubon's Note upon the Æginetæ.‡

Note 80, p. 128.

The Burial Service was read by Dr. Ireland. But I did not see any other Prebendary of Westminster in the procession, or near the grave, and I have heard that Dr. Vincent, the very learned Dean, was confined by illness. Be this as it may, the admirers of Mr. Fox will remember with satisfaction, that his

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* Vid. Andronicus Rhodius, lib. 5.
† Soph. Antigone 181.
‡ Vid. pp. 195, 6, 7, of the Commentary on Polybius.

funeral was attended by the Rev. Dr. Knox, the Rev. Dr. Symmons, the Rev. Dr. Raine, the Rev. Dr. Hughes, Principal of Jesus College, Oxford, and Dr. Davy, the Master of Caius College, Cambridge.

"Præcipua," says Tacitus, "sub Domitiano miseriarum pars erat, videre et aspici, cum suspiria nostra subscriberentur."* In England, it is true, we live under the protection of wiser laws, and the government of better sovereigns, than the subjects of Domitian; and yet, some Englishmen may be found, who are scared from the expression of their real feelings by the officiousness of whisperers, or the malignity of spies. But the excellent men whose names I have just now mentioned did not think it inconsistent with their professional or academical characters, to act openly and directly in conformity to their political principles. They knew that Mr. Fox had met with less encouragement than great statesmen usually experience from the smiles of courtiers and the favour of princes. But they suffered no consideration of this kind to deter them from paying the last tribute of respect to his memory.

"The baleful dregs
Of these late ages, this inglorious draught
Of servitude and folly have not yet,
Blest be th' Eternal Ruler of the world,
Defiled to such a depth of sordid shame
The native honours of the human soul,
Nor so effaced the image of its Sire."†

NOTE 81, p. 129.

When I wrote this word my memory deceived me. Atterbury died at Paris, February 17, 1731: but his body was brought to England, and interred the 12th of May following, privately, in Westminster Abbey.

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* Vit. Agricol.
† Akenside, Pleasures of Imagination, book ii.

NOTE 82, p. 129.

You have often sympathized with the generous indignation of Dr. Johnson where he describes the situation of Warburton, when chased and teased by an ignoble foe. "I remember," says he, "the prodigy in Macbeth:

"An eagle tow'ring in his pride of place,
Was by a mousing owl hawk'd at and kill'd."

It was the lot of Mr. Fox to meet with an assailant who united all the mischievous qualities which Johnson in his preface to Shakspeare imputes to the two antagonists of Warburton. In a moment of petulance "he would sting like a fly, suck a little blood, take a gay flutter, and return no more." But in seasons of rage "he would bite like a viper, and would have been glad to leave inflammation and gangrene behind him." Never can the well-wishers of Mr. Fox forget the treatment which he experienced from the opponent to whom I advert, when enfeebled by disease and harassed by care he attended the business of the House of Commons in the Session before his death. The strength of that opponent bore, indeed, little proportion to his malignity. But his noisy, restless, querulous, insolent freaks of hostility must often have brought to your mind the odious office which a poet of antiquity has assigned to one of the Diræ; and often has he provoked me, with a slight alteration of Virgil's language, to exclaim,

"Alitis harum una in parvæ collecta figuram,
Quæ deserta fori circum subsellia quondam
Importuna canit, Turni se pestis ob ora
Fertque refertque sonans, clypeumque everberat alis."*

* Æneid, xii.

APPENDIX TO THE PRECEDING NOTES.

Note A. p. 233.

In the history of our own country, we read of a strange custom which formerly prevailed at Halifax. "If the felon were found within the liberty, with goods stolen out or within the liberty or precincts of the same forest, either hand-habend, backberand, or confessand, any commodity of the value of thirteen pence halfpenny, he, if convicted on Saturday, the great market day, was to be immediately taken to the gibbet, and there to have his head severed from his body; and, if convicted on any other day, he was to suffer on the third market day after his conviction."

"Nec vero his sine sorte datæ sine Judice sedes."

"The felon was to be brought before the Lord's bailiff, who issued out his summons to the constables of four towns within the above precincts, to require four Frith Burghers from each, to appear on a certain day, and examine the charge." But be it observed, that when they tried and convicted they were *not* put upon their oath. They performed all the arduous and perilous duties of jurymen, without subjecting themselves at the time to that sanction which supplies the peculiar and most proper name for the office. In England, as in Carinthia, this summary sort of justice seems to have suggested some doubts; and in England, as in Carinthia, a remedy, if it deserves the name, was provided. In Carinthia,* the guilt of the accused person was again examined; and, if it was disproved, he was honoured with the rites of burial. At Halifax, *after every execution*, "the Coroners of the county, or some part of them, were obliged to repair to that town, and there to summon a jury of twelve persons before them, and sometimes the same persons who had condemned

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* Vide supra, p. 233.

the felon, and administer an oath to them, to give in a true and perfect verdict, relating to the matter of fact for which the said felon was executed; to the intent that a record thereof might be made in the Crown office."*

Our historian has produced a pretty long catalogue of malefactors who suffered under the gibbet law of Halifax. He produces no one instance in which the coroner, holding a jury, found reason to disapprove of the sentence; and he makes the following remark upon the beneficial effects of the usage: "The bad opinion which our ancestors had of furtum manifestum might give rise to the baron's power of punishing it; for nothing surely could more effectually deter from the practice than to take off the offenders without much trouble or expence to the prosecutors, in this public summary way, without the possibility of either pardon or reprieve, if they were found guilty."†

Here an enemy to the reform of our penal code might insist upon the authority of precedent, upon local convenience as a ground of peculiar severity, upon the absence of any historical testimony to prove the abuse of a law, rigorous, indeed, but effectual, and upon all the advantages which speediness and certainty in the execution of a sentence are supposed to bestow upon punishment as intended for example. Yet, for reasons which it is unnecessary to enumerate, I am inclined to believe that few modern legislators would be willing to restore and extend to other places the gibbet law of Halifax, as an additional and more efficacious security for property in our great manufacturing towns.

The adage which prayed for deliverance from "Hull, Hell, and Halifax," is founded upon principles which lie deep in human nature, as influenced by fortuitous and external circumstances. A farmer is hostile to the stealing of sheep, cows, and horses; a trader is implacable against forgery, and even sex, as well as condition, points the fears and the anger of mankind against particular crimes. But the laws, while they provide for the security of all subjects, should not perhaps enter into the prejudices and passions of any classes; and in the course of

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* Watson's History of Halifax, page 215.
† Page 221.

trials well does it become judges to look with a most watchful eye upon the local and other accidental considerations by which the minds of jurymen are likely to be affected in their views upon the malignity of actions, and the credibility of evidence. The various crimes which have been committed in a county where I have resided for twenty-three years—the capital punishments which have been inflicted—the harsh spirit by which juries have been more than once actuated, and the fatal mistakes which, after most careful enquiry, I seriously believe to have been made in three cases, without any apparent want of vigilance, or impartiality, or humanity in the court, fill my soul with the deepest sorrow. "The sting of death is sin, and the strength of sin in the law" of England is far too great. Let "grace," in conformity to the real import of the Scriptural word, abound in the exercise of human power, and as members of society, we shall have less to deplore, in sin against the law, and in death under it.

After my observations upon our penal code had been printed off, I heard that a Scottish lawyer, high in station, had moved in the House of Commons for leave to bring in a Bill which should extend the English punishment of child-murder to Scotland.

The precariousness of circumstantial evidence, the difficulties which medical men have repeatedly shewn to exist in ascertaining the causes by which the life of children newly-born is destroyed, the earnest and repeated cautions which they have suggested to our legislature, the salutary and mighty force of natural instinct, the influence of shame and remorse upon the mind of females in consequence of violated duty—these are considerations which at all times should restrain an English Parliament from precipitation in having recourse to the summum supplicium. But in Scotland there are other circumstances which deserve great and peculiar attention; for education in that country has long and happily diffused habits of diligence, sobriety, decorum, and religious seriousness among the lower class of the community. Why, then, do our neighbours in North Britain stand in need of a regulation which even English juries, with all their abhorrence of cruelty to the innocence and helplessness of infancy, and all their attachment to the amiable virtues of domestic life, are rarely eager to enforce?

Have complaints been made in Scotland, not, I mean, by self-appointed and self-applauding societies for the suppression of vice—not by little circles of projectors and sciolists, who meet together in a capital, and chat together upon things done, or by them thought fit to be done, "in Heaven above, or the earth beneath, and in the waters within the earth"—not by officious and narrow-minded magistrates of provincial towns, but by the general voice of a people advancing in civilization, and hitherto undebased by luxury? Is the Bill approved by such men as Mr. Malcolm Laing, or Mr. Jeffery, or Mr. Dugald Stewart, and other distinguished professors who now adorn the Universities of Scotland by their researches in practical ethics, in political economy, and the relations and interests of classes and individuals, in private as well as public life? Before Englishmen, who have few or no opportunities for direct observation, decide upon so important a subject, is it not proper that the representatives of counties and boroughs in Scotland should be called upon to communicate information to Parliament? Does their opinion agree with that of the learned member who moved for the Bill? Is that opinion founded upon their own immediate and personal enquiries, or upon the tragical tales and oracular harangues of this or that person belonging to courts of justice? What evidence have they severally or collectively to lay before the Parliament of the United Kingdom for the reality of the fact itself, that child-murder has lately increased? What is the amount of that increase? What proportion does it bear to the commission of the crime, when the population of the country was less? What are the probable causes of the evil in the present state of things, if it does exist? What are the moral restraints upon it from improved civilization, and increased means of subsistence? What circumstances of base seduction, or barbarous desertion upon the part of fathers, and of extreme depravity, or extreme ignorance, or extreme penury, upon the part of mothers, have been observed in particular cases? Is it possible, after the example of America, in other questions of homicide, to fix gradations of child-murder, and to adapt punishments to the greater or less aggravations of the offence? Is it equitable to inflict the heavier punishment of death upon the same kind and the same degree of testimony, upon which the lighter punishment of ex-

patriation has been hitherto inflicted? Is it, and why is it, very unlikely that any punishment short of death can be effectual? Is it, and why is it, likely that death itself will be effectual? Shall a rare and almost solitary example of clemency, supplied to us by the laws of Scotland be snatched away, so as to be no longer a model for imitation or a subject for praise to their English neighbours? In the intercourse of legal exchange shall the inhabitants of Scotland, instead of imparting their lenity for our rigour be compelled to accept our rigour for their lenity? Shall it be said of the party which solicits, and the party which grants this unprecedented partnership in severity, that in the same island, and in the same age, though subjects are progressive in the knowledge, governors are retrograde in the practice of legislation?

μὴ γένοιτο.

A wise man, if compelled to chuse between extremes, will make his choice with reluctance; nor would he venture upon making it before he had carefully and impartially surveyed all circumstances, under all aspects of positive and comparative utility. But there are intelligent, humane, and serious persons to whom the severities long exercised against unhappy mothers in one part of the kingdom, and now meditated in another, may, as an alternative, appear on some occasions not much less objectionable than the legalised χυτρισμὸς* of the Athenians, which, after all, does not seem to have been very often practiced.†

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* Contemplating, as I do, with satisfaction, the improved sentiments and habits of Christian countries, I cannot slightly pass over the impunity granted to infanticide, even among the polished and enlightened Athenians. What Pliny says of the natural world is true in the moral. "Quædam pudenda dictu tanta auctorum asseveratione commendantur, ut præterire fas non sit."—Nat. Hist. lib. xxix. cap. 5. It were absurd to deny the reality of the practice. But humanity would dispose us to believe that it was not very frequent. It has not fallen in my way to meet with any instances of it in the writings of the Greek orators or Greek historians, and little stress is to be laid on the case of

† Vid. Petit. Leg. Attic. p. 220, edit. Wesseling.

The nobility, and it pains me to add, the clergy of Sweden, as I have stated in page 467, resisted the humane wishes of a

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Ion in the tragedy of Euripides, and a few other similar stories which have been take up by poets. I have to confess farther, that of the law which is said to have permitted the exposure of children at Athens, I have never been able to find the contents, or the origin, or the name of the author. Let us, however, examine the evidence which has come down to us, and the use which has been made of it by scholars.

Turnebus, in lib. xxxviii. cap. 38 of his Adversaria, gives no example, but contents himself with noticing the word χυτρισμὸς, and referring to Hesychius. But in lib. ii. tit. 4, of the Commentary on the Leges Atticæ, Petit says, "Quemadmodum liberos tollere in patris erat positum potestate, ita etiam necare et exponere, idque, meo judicio, non tam moribus, quam lege receptum fuit Athenis, non cum hac summi Philosophi exceptione Polit. Libro VII. cap. 16. περὶ δὲ ἀποθέσεως καὶ τροφῆς τῶν γιγνομένων, ἔστω νόμος, μηδὲν πεπηρωμένον τρέφειν. Nam non tantum liberorum τοὺς πεπηρωμένους, sed etiam quos libebat sanguinolentos licebat vel necare, vel exponere, quod certe idem est: etenim Necare, inquit Paulus Libro II. Sententiarum [Tit. XXIV. 10.] videtur non tantum is, qui partum perfocat: sed et is, qui abjicit: et qui alimonia denegat: et is, qui publicis locis misericordiæ causa exponit, quam ipse non habet. l. 4. D. de agnoscendis liberis." Petit here gives his own judgment, unsupported by the express testimony of any ancient writer, that the laws, as well as usage, sanctioned the practice at Athens. It must, indeed, be presumed that if the practice prevailed for a long time, there was at least a tacit consent from the laws. But the passage which Petit has quoted from Aristotle proves nothing to Petit's purpose. Aristotle is delivering his own opinions upon an ideal republic, and says, "let there be a law," without any distinction of place, and without the slightest intimation that such a law was in force at Athens. He adds: "Διὰ δὲ πλῆθος τέκνων, ἐὰν ᾖ τάξις τῶν ἐθνῶν (legitur, ἐθῶν) κωλύῃ; μηδὲν ἀποτίθεσθαι τῶν γιγνομένων, ὡρίσθαι γὰρ δεῖ τῆς τεκνοποιίας τὸ πλῆθος," and if more than the prescribed number be begotten, he states certain circumstances under which "ἐμποιεῖσθαι δεῖ τὴν ἄμβλωσιν." Not a word is said about any law which permitted infanticide at Athens. But to states where by law it might not be permitted, he gives directions for limitting the number of children, and points out an expedient most shocking to our sensibility for preventing inconvenience to parents when the number was likely to be exceeded. Singular it is, that even the humane Pliny does not seem to differ very widely from Aristotle, for having described a process which

Swedish king. But in Englishmen, considered as individuals, there is a sort of hereditary and instinctive aversion to the de-

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"præstabat, ne mulieres conciperent," he adds, "quam solam ex omni atocio dixisse fas sit, quoniam aliquarum fœcunditas plena liberis tali venia indiget."—Lib. xxix. cap. 4. The understanding of man pauses on the general principle on which Aristotle justifies the above-mentioned regulation: "τὸ γὰρ ὅσιον* καὶ τὸ μὴ, διωρισμένον τῇ αἰσθήσει καὶ τῷ ζῆν ἔσται." The uncivilized Germans were in this respect more entitled to our approbation than the sagacious Athenians. "Numerum liberorum finire, aut quemquam ex agnatis necare, flagitium habetur."—Tacitus de moribus German. page 296, edit. Lips.

Petit, then, by his reference to Aristotle, gives us no light upon the Athenian law, and there seems to be little propriety in his explanation of the word *exponere*, as applied to the laws and usages of Athens, by the authority of a Roman lawyer who was not writing about them.

Petit thus proceeds: "Hinc passim apud Comicos, sive Græcos, sive Latinos in palliatis fabulis suis, in quibus mores Atticos repræsentant, infantum expositiones, ut in Heautontimorumeno Terentii sive Menandri, Actu iv. Scena i." from which he quotes v. 14, and the four following. Here we gain some light upon mere usage, for comic writers are faithful witnesses to manners, and the Latin play of Terence was founded upon a Greek play of Menander:

> "Ex integra Græca integram Comœdiam
> Hodie sum acturus Heautontimorumenon."
>
> PROLOG.

For the fuller illustration of the practice we may have recourse to Act iv. Scene 1 of the Hecyra, which, as we are told by Donatus in his preface to the play, was taken from a comedy of Apollodorus. We have an additional testimony in the Prologue to the Casina of Plautus, where the puella expositita is mentioned, and the comedy, we should observe, is founded on the Clerumonoe of Diphilus.—Vid. Prolog. These, I believe, are the proofs which the Latin comic writers will furnish in support of the very strong language used by Petit—passim. The aid it de-

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* Upon ὅσιον, as legally distinguished from ἱερὸν, V. Ammonius, page 104; and Valckenaer's Note, page 184; Taylor's Note on Æschines contra Timarch. vol. ii. page 90. ed. quarto; and on Demosthenes contra Timocrat. vol. iii. page 445 and 457.

struction of human life in cases where custom has not familiarised our minds to the practice, and where personal hopes or fears,

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rives from the Greek comic writers is yet more scanty—Petit quotes from the Ranæ of Aristophanes,

> "ὅτε δὴ πρῶτον μὲν αὐτὸν γενόμενον
> χειμῶνος ὄντος ἐξέθεσαν ἐν ὀστράκῳ." 1222.

Scholiastes: "ἐπεὶ ἐν χύτραις ἐξετίθεσαν τὰ παιδία, διὸ καὶ χυτρίζειν ἔλεγον."

To a person who is inquiring for Athenian instances, the verses of Aristophanes, even by Petit's own confession, afford no information. He says, "apud Aristophanem, de Œdipo, non e Thebanorum instituto, quod plane huic adversabatur;" and for this he quotes a decisive passage in Ælian's Various History, lib. ii. cap. 7. The commendation bestowed upon the Theban law, which denounced death against him who was known "ἐκθεῖναι τὸ παιδίον, ἢ εἰς ἐρημίαν αὐτὸ ῥίψαι," implies that some other states had not a similar law—but it does not specify any law at Athens which permitted the practice, and Aristophanes might have written, as he has, about Œdipus, though no such law, and even no such practice were known among his own countrymen. The Scholiast, indeed, here and elsewhere, is a competent witness to the practice. But it does not furnish any testimony from particular instances, nor upon the age, or directions, or framer of the law. My opinion is, that in the comedies of Aristophanes there is no direct and unequivocal evidence on the subject, though, as explained by the Scholiasts, the foregoing one or two other passages supply a strong presumption in favour of the fact. I have already stated the testimony which Terence and Plautus may furnish. But in the fragments, either of Philemon or Menander, which have come down to us in the original, there is no vestige of the practice—let us return to Aristophanes. In the Thesmophor. line 512, we thus read:

> "τότ' εἰσέφερε γραῦς ἐν χύτρᾳ τὸ παιδίον."

Here was no intention to expose the child. The old woman is sent out by the mother to buy an infant and impose upon her husband—the nurse brings it in, "ἐν χύτρᾳ," and this was often done, as it was here, when they gave children a sponge with honey to stop their crying—see line 462 of the Acharnensians, to which the Scholiast on the Thesmoph. refers, and upon which the Scholiast ad locum mentions the custom.

In the Vespæ, l. 288, we have the word ἐγχυτριεῖς, which the Scholiast explains thus: "ἀντὶ τοῦ, φονεύσεις, ἐκ τοῦ παρε-

political animosities, the supposed interests of commerce, or the contagious pride and jealousy of professions do not operate I

τουμένου," and after giving other interpretations, he adds, "*ἔτι γε μὴν καὶ τᾶς μαίας τὰς ἐκτιθείσας ἐν χύτραις τὰ βρέφη.*" But the various explanations given in the Scholiast will suit the word for all the various purposes for which children were put by nurses *ἐν χύτρᾳ*, and to expose them was one.

I do not recollect any other part of Aristophanes which can throw the smallest light on the subject: and the silence of a writer who was severe enough in censuring the vices of his countrymen may lead us to suppose that infanticide was not very common. It may not be amiss to remark, that Flor. Christian. in his Note on the foregoing line of the Vespæ, refers to the Minos of Plato for evidence which is not to be found in it. The *ἐγχυτρίαι* of whom Plato there speaks, were præficæ who attended burials, "not obstetrices quæ in ollis infantes exponebant."

Potter, in his Greek Antiquities, vol. ii. p. 333, speaks of infanticide, and quotes, as from Posidippus, these two lines:

"*Υἱὸν τρέφει τις, κἂν πένης τις ὢν τύχῃ,*
Θυγατέρα δ' ἐκτίθησι κἂν ᾖ πλούσιος."

Here we have direct proof of the practice, though not of the law. What reason Potter had for assigning these verses to Posidippus, I know not. I do not find them in Grotius's excerpta (see pages 812 and 900), nor in the passages which Athenæus cites from ten comedies of Posidippus.

The Greek lexicographers furnish pretty full evidence. "*Ἐγχυτριεῖς, φονεύσεις, μετενήνεκται δὲ ἀπὸ τῶν ἐν ταῖς χύτραις ἐκτιθεμένων παίδων.*"—Hesychius.

"*Χυτρισμὸς ἡ τῶν βρεφῶν ἐν ταῖς χύτραις ἔκθεσις.*"—Hesychius.

"*Ἐγχυτρισμὸς, ἡ τοῦ βρέφους ἔκθεσις, ἐπεὶ ἐν χύτραις ἐξετίθεντο.*"—Moeris, p. 138.

The Note of Pierson contains much valuable matter. But I shall quote the conclusion. "Illud meretur observari, et apud Scholiastum Aristoph. Vesp. 288. et apud Etymologum, p. 313. et apud Suidam l. c. *καταχυτρίσαι* exponi *βλάψαι*, in Lexico autem Regio, quod Parisiis evolvit Cl. Ruhnkenius, legi *βάψαι*. Quod mihi quidem non temere videtur damnandum."

If *βάψαι* be admitted as the true reading, we may among the Lacedemonians find a custom, which may induce us to apply the word not to children exposed, but to children preserved: *οὐδὲ ὕδατι τὰ βρέφη, ἀλλ' οἴνῳ περιέλουον αἱ γυναῖκες, βάσανόν, τινα ποιούμεναι τῆς κράσεως αὐτῶν.*" Here it may be proper to remark, that we have decisive testimony for the law which tole-

distinguish between actions which may have the effects of cruelty, and a cruel disposition. I charge not any evil motive,

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rated and even enjoined infanticide among the Lacedemonians; and of the reasons which were given for it; and of a power lodged not in parents, but in the elders of tribes:

"Τὸ δὲ γεννηθὲν οὐκ ἦν κύριος ὁ γεννήσας τρέφειν, ἀλλ' ἔφερε λαβὼν εἰς τόπον τινὰ λέσχην καλούμενον, ἐν ᾧ καθήμενοι τῶν φυλετῶν οἱ πρεσβύτατοι, καταμαθόντες τὸ παιδάριον, εἰ μὲν εὐπαγὲς εἴη καὶ ῥωμαλέον, τρέφειν ἐκέλευον, κλῆρον αὐτῷ τῶν ἐννακισχιλίων προσνείμαντες· εἰ ἀγεννὲς καὶ ἄμορφον, ἀπέπεμπον εἰς τὰς λεγομένας ἀποθέτας, παρὰ Ταύγετον, τὸν βαραθρώδη τόπον, ὡς οὔτε ἀυτῷ ζῆν ἀμεῖνον, οὔτε τῇ πόλει, τὸ μὴ καλῶς εὐθὺς ἐξ ἀρχῆς πρὸς εὐεξίαν καὶ ῥώμην πεφυκὸς." (Plutarch. in Vit. Lycurg. tom. i. p. 49. Ed. Xyl.)

In the course of my reading I have met with no testimony so clear, or so full, upon the Athenian law, as we have here for the Lacedæmonian. I have no doubt, however, that a law tolerating the practice existed at Athens, and yet I am disposed to think, that the natural affection of parents did not often suffer them to expose their children. Our ignorance of the law is thus far inconvenient, as we know not whether it was left to the arbitrary will of every parent in every situation to expose his children, or whether particular conditions, such as the bodily imperfection of the offspring, or the extreme poverty of the parent, which Aristotle mentions in his ideal Republic, were laid down by the lawgiver, and punishment in all other cases inflicted upon the father or mother.

In Philo Judæus de Leg. Special. there is a passage which does not indeed, directly point to the Athenians, but which give us reason like the commendation bestowed by Tacitus upon the Germans, and by Ælian upon the Thebans, to suppose that other states of antiquity, as well as the Athenian, tolerated infanticide.

"Διὰ τάυτης τῆς προστάξεως, καὶ ἕτερόν τι μεῖζον ἀπηγόρευται, βρεφῶν ἔκθεσις, ὃ παρὰ πολλοῖς τῶν ἄλλων ἐθνῶν ἕνεκα τῆς φυσικῆς ἀπανθρωπίας, χειροηθὲς ἀσέβημα γέγονε." Vol. ii. page 318, edit. Mangey, whose Note runs thus: "De infantum expositione Moses nihil præcepit, ideo forsan, quoniam sequiorum temporum luxuries barbariam istam Gentibus etiam humanioribus invexit, atqui consuetudo immanis Judæis omni tempore invisa." He then quotes a pertinent passage from Josephus contra Apion. lib. ii. cap. 24.

Philo was, I doubt not, right in saying, that many nations adopted the custom. He justly rejects the plea of mercy, and

or any evil intention, the result of such motive, upon the learned mover of the Bill. But I trust that such men as Sir Vickery

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yet it deserves to be noticed, that he did not particularise either the Athenians or the Lacedemonians.

As it is my wish to state the evidence we have upon this subject more fully and more precisely than I have seen it done by other writers, I must not wholly omit some lines in the verses commonly, but erroneously ascribed to Phocylides.

"νηπιάχοις ἀπαλοῖς μὴ μάρψῃ χεῖρα βιαίως.
* * * * * * * *
Μηδὲ γυνὴ φθείρῃ βρέφος ἔμβρυον, ἔνδοθι γαστρὸς,
μηδὲ τεκοῦσα καὶ ῥίψῃ, καὶ γυψὶν ἕλωρα."

These lines point to no particular state or law. But they prove too clearly the existence of a practice at which nature shudders, and which compels us to reflect upon the serious and humane observation of Plutarch:

"Ἀκρατον ἐν τοῖς θηρίοις ἡ φύσις καὶ ἀμιγὲς καὶ ἁπλοῦν φυλάττει τὸ ἴδιον· ἐν δὲ ἀνθρώποις ὑπὸ τοῦ λόγου καὶ τῆς συνηθείας (ὃ τοὔλαιον ὑπὸ τῶν μυρεψῶν πέπονθε) πρὸς πολλὰ μιγνυμένη δόγματα καὶ κρίσεις ἐπιθέτους, ποικίλη γέγονε καὶ ἰδία, τὸ δὲ οἰκεῖον οὐ τετήρηκε."—Plutarch. de Amore Prolis. Wyttenbach's edition, tom. ii. par. 2. p. 1006.

The civilised inhabitants of Europe will look back with just disapprobation upon the opinions and customs of antiquity, and the imbecility or folly of their laws in the toleration of infanticide. But as I have been chiefly speaking of the Athenians, it may be right to suggest, that the practice of exposing children is a far more unquestionable fact than the entire and arbitrary right which fathers and mothers have by some moderns been supposed to exercise over the lives of their children. The fullest account I have seen is in lib. i. cap. 2. of Meursii Themis Attic.

"Ac prima quidem lex Triptolemi, uti dixi, honorandos esse parentes statuebat: quod ut cogerentur facere, metu poenæ, qui naturæ pravitate detrectabant, jus parentibus in liberos vitæ et necis Solon dedit. Sextus Empiricus, Pyrrh. Hypotyp. lib. iii. cap. 24. *Καὶ ὁ Σόλων Ἀθηναῖος τῶν περὶ τῶν ακρίτων νόμον ἔθετο, καθ' ὃν φονεύειν ἑκάστῳ τὸν ἑαυτοῦ παῖδα ἐπέτρεψε.* Quin etiam Solon Atheniensis legem de indemnatis posuit, per quam unicuique filium suum interficere permisit. Hermogenes, De Invent. lib. i. cap. 1. *Ἐνώπιόν τις τῆς μητρὸς ἀπέκτεινε τὸν υἱὸν, κατὰ τὸν τῶν ἀκρίτων νόμον.* Occidit quis filium coram matre, juxta legem de indemnatis. Curius Fortunatianus, Rhet. lib. i Lege quemadmodum sit absoluta qualitas? Indemnatos liberos

Gibbs, Sir Thomas Plomer, Sir Arthur Pigott, and Sir Samuel Romilly will pause—will enquire—will reflect, before they lend the aid of their talents, and the sanction of their votes to a Bill

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liceat occidere. Tres filios lege indemnatorum occidit: reus est uxori maletractationis. Hic enim se dicit lege fecisse. Ac de matre quoque, est locus Sopatri, in Divis. Quæst. Ἐξεῖναι καὶ μητράσιν ἀκρίτους ἀναιρεῖν τοὺς παῖδας. Licere etiam matribus liberos indemnatos occidere."

In chapter twenty-two of his book de Solonis Vita, legibus, atque scriptis, Meursius himself opposes the authority of Dionysius Halicarnasseus to that of Sextus Empiricus. Dionysius in the second book of his Roman Antiquities tells us, that, according to the laws of Solon, Pittacus, and Charondas, the Greek fathers were "allowed to drive their children from their houses, and to disinherit them, "περαιτέρω δὲ οὐδέν." His testimony is important, and we must observe that according to it, even these severities were granted by the laws to parents towards disobedient children only, "τιμωρίας κατὰ τῶν παίδων, ἐὰν ἀπείθωσι τοῖς πατράσιν, οὐ βαρείας."—Dionys. Hal. Rom. Antiq. lib. ii. edit. Sylburg.

These cases are perfectly distinct from the custom of exposing children, and it must be observed, that Dionysius does not mention either the infanticide practised by the Athenians, or the law which permitted it. The passage in Sextus Empiricus is so obscure, that we cannot determine whether he meant to speak of Solon's law as authorising parents to expose new-born children, or to kill disobedient children of any age. He does not employ the usual word, ἐκτιθέναι, but φονεύειν, and therefore I suspect that he spoke of children punished, not children exposed by their parents, and even in this I believe him to have been mistaken.

My chief view is to state what has been recorded of the Athenians. I am unwilling to suppose that the frequency of Infanticide among them so familiarised the human mind to it as to occasion the dearth of particular instances which I have noticed in Greek writers, and which is not found upon other customs, less important in our estimation. But the practice, I am sorry to say, prevailed in other Greek states; and, as it should seem, was not prohibited in them by the laws. The scene of action, as appears from the Prologus, and various passages in the Cistellaria of Plautus, was Sicyon. A merchant from Lemnos was the father of Silenium; he was not personally known to Phanostrata the mother, and in consequence of his sudden, secret, and illicit amour, he fled back from Sicyon to his own country. After the death of his first wife he returns to Sicyon, and, when he pays

which may rest, I do not say, upon the prepossessions or the humour of any single man, but in part I do fear upon the vulgar, unequal, vindictive principle of demanding with too little discrimination, blood for blood.

The political motives either of a superabundant population, or of incapacity in parents to provide for a large family of children, can have little or no place in the mind of an English legislator, because our population is not superabundant, because we have other resources, as in colonization, &c. if it were so, and because the personal incapacity of parents to support at least the existence of their children, is not without remedy from regulations which the laws have wisely and humanely established. But in the

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his addresses to Phanostrata, for the purpose of marrying her,

> "Et eam cognoscit esse, quam compresserat;"

she unreservedly tells him

> "ejus ex injuria
> Peperisse se gnatam, atque eam se servo illico
> Dedisse exponendam."

Though the Roman laws encouraged by rewards the fathers of many children, the custom of exposing their new-born offspring seems to have been of great antiquity, and long continuance. It is alluded to by Juvenal, Sat. vi. v. 601, 2; and I have met with no express interdict against it, before the time of Valens.

When Nero had killed his mother, his subjects, among other indignities, "παιδίον ἐς τὴν ἀγορὰν ῥίψαντες προσέδησαν αὐτῷ πινάκιον, λέγον, Οὐκ ἀναιροῦμαί σε, ἵνα μὴ τὴν μητέρα ἀποσφάξῃς. (Dio Cassius, lib. lxi. par. 16.)

Reimar's Note on the foregoing passage runs thus: "Morem infantes exponendi, antiquitus usitatum, diserta lege primum sustulerunt Valens et Gratianus l. 2. Cod. de infantibus exponendis lib. viii. tit. 52. vide Cl. Noodt in Jul. Paul. c. 6."

The Latin writers have recorded several instances. "Quo die Caligula defunctus est, partus conjugum expositi." (Sueton. in Vit. Cal. parag. 7.) "Caius Melissus ob discordiam parentum expositus." (Sueton. de illust. Grammatic. parag. 21.) Marcus Antonius Gnipho, who, probably, wrote the four books (Rhetoric. ad. C. Herennium) prefixed to Cicero's Works, and commonly ascribed to C. Cornificius, was, "in Gallia Natus, sed expositus." (Ibid. parag. 7.)

moral sentiments of mankind that legislator might find some directions which it were unsafe for him entirely to disregard, if he would avoid that "weakness which a portion of superfluous pain is apt to introduce into the law, or if he sets a due value upon the efficacy which the law acquires, when the people are satisfied with it, and voluntarily lend their assistance in the execution of it."* Now there are offences against which our indignation bursts out instantaneously, and of which our sober reason seldom admits any palliation. But the pity which is often excited in cases of infanticide carries with it a strong presumption that, in our judgment and our feelings, we secretly recognize the force of that temptation which can overcome the instinct implanted by nature in the mind of a mother—a force so powerful, that when neither any of the social motives, nor the dread of detection and punishment, have been able to prevail over it, we often infer the absence of that "depraved disposition" which we justly impute to offenders, "when the mischief of an act is very great, and the temptation to it is very little."†

In regard to the crime of which I am speaking, we have in this country many "tutelary motives" as they are called by Mr. Bentham, all consistent, and all co-operating with those which arise from the sanction of the laws. In a state where the intercourse of individuals with each other is so near and so frequent, sympathy upon such an occasion is a very powerful, and united with other causes which I am going to mention, is not a very irregular motive. Usage and religion are among those tutelary motives to which Mr. Bentham would assign a place in "the catalogue of standing tutelary motives;" and religion more especially, when acting together with benevolence, will act in an uniform manner, and "oppose the commission of a crime on account of its mischievousness."‡ When therefore sympathy, usage, and religion come in aid of natural affection, surely the legislator, when he fixes the quantity of punishment, may take into his calculation the force of the other tutelary motives just now enumerated, and consider well whether it be such as may warrant

* Bentham, page 196. † Ibid. p. 146.
‡ Ibid. p. 142.

him in subducting from his penalties any, even the smallest, portion of that rigour which in the absence of those motives it would be necessary, and therefore just for him to employ. "But the force of those other powers," we may be told, "is never determinate enough to be depended upon in cases where the force of the moral sanction has not been expressly introduced into and modified by the political. That force never can be introduced like political punishment into exact lots, nor meted out in number, quantity, and value. The legislator therefore is obliged to provide the full complement of punishment, as if he were sure of not receiving any assistance whatever from any of those quarters. If he does, so much the better. But lest he should not, it is necessary he should at all events make that provision which depends upon himself."*

I admit the premises, that the force of those "powers cannot be meted out in number, quantity, and value," with such exactness as shall perfectly suit all conceivable cases. But I think the conclusion drawn from the premises rather too wide, when it is said that the legislator is obliged to provide the full complement of punishment as if he were sure of not receiving any assistance whatever from any of those quarters. "Truth," we are told, "is productive of utility, and observing truth is acting as things really are, and he who acts as things really are must gain his end, all disappointment proceeding from acting as things are not."†

Is it then true, that the tutelary motives which I have mentioned have severally or jointly a great or even a slight force in preventing infanticide? Is it not the duty of the legislature to examine what is the probable quantity of that force, and what upon the whole may be the probability of its operation? If the force be little, or the probability be little, then I should grant that the legislator is obliged to act as if he were sure of receiving no assistance from those quarters. But if the probability be great, as in this case I contend it is, and if the force also be great, the circumstance of irregularity is not of itself so strong as to render it necessary for him to depend wholly on that pro-

* Bentham, p. 183.
† Warburton's Alliance, book ii. chap. 2.

vision which is made by himself. True, however, it is, that in assigning the portion of punishment he is to look to the force of a temptation which overrules both the tutelary motives mentioned by me, and those which are furnished by the laws; and true it also is, that where all these motives are overcome, an offence will sometimes appear to have increased malignity. Still, there often is not in the crime of infanticide such a malignity as indicates depravity of disposition; and therefore the legislator will be upon his guard against the introduction of such punishment as ought to be employed in restraining such depravity. The mischievousness of single acts is the same, whether the agent be, or be not, generally depraved in disposition. But the chance of frequency is lessened where that disposition does not exist, and I think that of such a circumstance a legislator ought never to lose sight. Keeping it in view, he will be induced by it, not indeed to abstain from punishment, but to assign such a measure of it as under all circumstances shall be necessary for the prevention of the crime—while he avoids such punishment as "is conclusively indicative of a habit, he will increase it in point of magnitude so far as it may fall short in a point of certainty and proximity; and even where in point of quality it is particularly well calculated to answer its intention, and cannot exist in less than a certain quantity, he will farther stretch it a little beyond that quantity which on other accounts would be strictly necessary."*

My opinion, however, is, that for the crime of infanticide punishment for the first offence, especially if accompanied by circumstantial extenuations, may exist in a quantity less than death; and in the practice and regulations of foreign states, there is some encouragement for us, if not to make the experiment in our own, yet to be cautious, at least, in suffering the contrary experiment to be introduced in another country, where it has hitherto been unknown.

The legislator, who undertakes to propose statutes, and especially such as are to affect the life of man, would do well to form those habits of observation, which may give him not, perhaps, the splendid name, but the solid knowledge of a philosopher, to

* Bentham, p. 181.

explore all those properties of the human mind, "which," as Butler says, "are mere questions of fact, or natural history, not proveable immediately by reason, but by appeals to the external senses, or inward perfections," to survey the "whole complex constitution of human nature," to examine both the absolute and relative qualities, and the separate and conjoint operations of our appetites, affections, and passions, to discover in them the causes, while in other quarters he looks to the consequences, of human action, to balance with the utmost wariness and utmost impartiality the force of every impelling and every restraining motive, and by the general result of such investigations to measure the chances of success in any particular application of capital, and, in truth, every severe punishment.—If, indeed, the tutelary motives, which Mr. B. himself has enumerated, had no existence at all, or what, in the view of the legislator, is equivalent, if their power, though irregular, were not very frequent, nor very salutary, every penal code ought to be sanguinary, like the system of Draco, or, it should rather be said, that with such a frame of the human mind, and in such a state of things as would be the effect of it, no appeal could be made by a lawgiver to moral approbation: no precise notions of the right to command, or the duty to obey, would prevail: no principles of justice would be embodied in the forms of law: no distinct traces of civil government would be discerned: no physical force could be regularly employed for the protection of the weak and controul upon the strong, nor, indeed, employed at all, but according to the resources and for the purposes of savage revenge, when resisting savage aggression. It is, I grant, a matter of fact, that such motives operate irregularly, and, according to my own observation upon mankind, it is also a matter of fact, that under certain circumstances they will afford some degree of aid to the legislator. Instead, therefore, of assuming broadly and without any qualification, that he must do without them, and depend wholly upon himself, it is proper for him to consider what those circumstances are under which he can do better with them. A penal statute, recommended even by such an enlightened person, must, like all other political regulations, be in the first instance experimental, guided, indeed, by analogies more or less applicable from past experience, but supported

only by probabilities, which more or less approach certainty, without the possibility of reaching it.

Infanticide is a most mischievous act. It calls for very powerful restraints from laws. It is practically to a great and happy extent restrained by the tutelary motives of which I have been speaking, and when those motives have been inefficacious, the lawgiver may, I think, consistently with the principle of utility, distribute the action, which now bears a general name, into different classes, as other criminal actions called by a common name have been distributed, and in fixing the penalties he may assign what to him shall appear a just value, to repetition, or any other circumstance of aggravation upon one side, and upon the other side, to anguish of soul from perfidious desertion, to exquisite sensibility to shame, or any other circumstance of extenuation. In child-murder, though extenuating circumstances, alas! are rarely made a ground for mercy from the prerogative of the Sovereign, they often find their way to the compassion of jurymen, and produce impunity as the only alternative they can employ for death. I love that compassion; but I lament that impunity. I wish to make every possible provision against uncertainty in the administration of the laws, by the increased appearance of equity in punishments. I believe, that by a very enlightened and very attentive legislature, circumstances which extenuate and circumstances which aggravate guilt, might in many cases be calculated with precision, greater than they hitherto have been, and quite sufficient for all the best purposes of legislation.

If the frequency of a crime be often admitted as a justification of increased severity, may not the rarity of it, when compared with the tendency of opportunities, or the force of temptations to produce it, with the struggle of moral motives to prevent it, and with the number or causes of other offences, be sometimes considered as a reason for mitigation of punishment—especially where, as I have observed of infanticide, a solitary action in a very few instances leads us to infer any radical wickedness of heart in the agent?

"Illam ego non tulerim, quæ computat, et scelus ingens
Sana facit."*

* Juvenal, Sat. vi.

But this deliberate and execrable cruelty in a mother to her offspring, widely differs from the motives which actuate the generality of those unfortunate females whom the English law puts to death for infanticide.

Reflecting upon the argumentative and unanswered, but unavailing speech of Mr. Adam upon the power vested in the courts of Scottish judicature: on the sentence of transportation which was passed and executed upon some state criminals at the close of the last century, and on the resistance which in certain quarters has been since made to the further introduction of juries into Scotland, I did not feel much surprise at one part of the information which lately reached me. But has not society witnessed already too many proofs of an observation which nothing but my conviction of its truth and importance could have induced me to communicate—too many instances, where professional men have been more impelled to act from personal temperament, not very favourably affected by personal experience, than from large and exact views of human nature—where they appear to have been more skilful in the capricious distinctions and arbitrary assumption of jurisprudence than in the profound investigations and simple results of moral science—where they have been more accustomed to provide against local and temporary, than permanent and nationals evils—more inclined to propose measures of rigour than lenity—more qualified to direct a jury by the authority of fixed rules, than to guide a legislative body by the light of general principles? Yet my anxious hope is, that the Bill of which I am speaking will not be passed by an English Parliament in the nineteenth century, without clear and numerous proofs of the most unequivocal and most urgent NECESSITY.

Before I quit the painful but interesting subject of our Penal Code, I think it my duty to remark, that in the appointment of Judges something more than ordinary attention seems within these last five or six years to have been shewn to professional knowledge in the persons promoted, to solid judgment, to integrity, and to humanity, without any recommendation from party compliances, or any aid from family connections. Great, too, is the satisfaction I feel in the opportunity I now have for stating, that on several of our late circuits some of our venerable minis-

ters of justice are said to have sympathized with the general and growing sense of their countrymen on the side of clemency, and to have left fewer condemned criminals, than was formerly the case, for execution. This occasional interposition of mercy indicates a progressive but favourable change in quarters where change was much to be desired, and is much to be commended. It constitutes an experimental proof, that in order to answer their best ends in society, and to acquire their proper authority over the minds of men, the laws may be revised, and the penalties now inflicted by them in many respects mitigated. It will leave room for grave and full deliberation upon a Penal Code to be completely amended; and as to the alleged inconveniences of a total repeal, they may be easily remedied by an express declaration, that the old laws should remain in force for six, or at the utmost twelve months, after the enactment of the new.

He that should have the magnanimity to propose such a repeal, would not, I hope, be discouraged by the menacing and invidious allusions which, on some discussions on the Test Act, a deceased Prelate once made to the practice of putting a halter round the neck of the man who should propose a new law, and keeping it there, that he might escape or perish according to the issue of the deliberation.* In the last mentioned place it may be worth while to remark, Stobæus ascribes to Zaleucus the same relations which Diodorus Siculus † assigns to Charondas: and Wesseling in a note ‡ supposes, with some probability, that on this, as well as other occasions, Diodorus had met with a corrupted manuscript, in which he found the name of Charondas erroneously substituted for that of Zaleucus.

The same legislator, whether Zaleucus or Charondas, seems to have acted nearly upon the same general principles which Beccaria held, on the inflexibility of laws yet unrepealed, and on the mischiefs which arise from the subtle and licentious interpretations of private persons. And it must be owned that in some cases Judges, by their proneness to employ such interpretations, virtually assume the office of legislators, defeat the original intentions of those who enact statutes, and give rise to error and

* Vid. Stobæum, Serm. 42 and 37.

† Lib. xii. parag. 17. edit. Reimar.

‡ Vol. i. p. 489.

perplexity in the minds of those who are required to obey them. The whole passage in Dionys. Halicarnass. deserves to be quoted, and it runs thus:

"Προσέταξεν ἐκ πάντος τρόπου πείθεσθαι τῷ νόμῳ κἂν ᾖ παντελῶς, κακῶς γεγραμμένος. Διορθοῦν δὲ συνεχώρησε τὸν χρείαν ἔχοντα διορθώσεως. Τὸ μὲν γὰρ ἡττᾶσθαι ὑπὸ νομοθέτου καλὸν εἶναι ὑπελάμβανε· τὸ δὲ ὑπὸ ἰδιώτου παντελῶς ἄτοπον, καὶ εἰ ἐπὶ τῷ συμφέροντι γίνεται· Καὶ μάλιστα τοῦ τοιούτου τρόπου τοὺς ἐν τοῖς δικαστηρίοις τῶν παρανενομηκότων προφάσεις καὶ διανοίας ἀντὶ τῶν ῥητῶν εἰσάγοντας ἐκώλυσε ταῖς ἰδιάις εὑρεσιλογίαις καταλύειν τὴν τῶν νόμων ὑπεροχήν."*

I have great pleasure in concluding what I have written on a very important subject, with the statement of a fact which cannot fail to be interesting to those who are adverse to the frequency of capital punishments. My very ingenious and benevolent friend, Mr. Basil Montague, has sent to the press a large collection of the opinions which many distinguished writers upon the Penal Codes of England and other countries have delivered in the defence and recommendation of other punishments, as substituted for death. If some specimens with which he has lately favoured me had come into my hands before my own remarks had gone to my printer, I should have derived from them much valuable information, and especially upon the successful endeavours of Mr. Bentham to furnish a better scale than we have hitherto had for measuring guilt and apportioning punishment. Basil Montague, I am told, has been much commended by professional men for his publications upon subjects connected with the studies and duties of his profession. I esteem him very highly for his literary attainments and his personal virtues. Gladly, too, would any advocate for the reform of our Penal Code acknowledge such a man a συνεργὸν τοῦ κόπου τῆς αγαπῆς.

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* It may be worth while to add, that, in the next paragraph, we have the well-known story of the unfortunate offender, who, having lost his only eye, as a punishment for destroying one eye of a man who had two, stood with a halter about his neck, and pleaded successfully for the repeal of the Lex Talionis.

NOTE

UPON

MR. FOX'S HISTORY

OF THE

EARLY PART OF THE REIGN OF JAMES II.

HAVING stated my expectation that Mr. Fox's projected History would not be unworthy of his general fame, and that the correctness of the style would be proportionate to the importance of the matter, I intended to communicate to you such remarks as might occur to my mind upon the perusal of a work which had not appeared when I began to address you. But my opinions have been so largely anticipated, so luminously expressed, and so judiciously defended by two very able writers in the Edinburgh and Monthly Reviews, that, having little to add to those critiques, and nothing to oppose to them, I abandoned my determination. "By the common sense of readers," says Johnson, "uncorrupted with literary prejudices, after all the refinements of subtilty, and the dogmatism of learning, must be finally decided all claim to poetical honours." * This observation may be extended to every kind of literary composition. Enough has been already done by criticism to assist the judgment of the public upon Mr. Fox's work; and when political partialities and animosities shall have spent their force, the merits of that History will be more distinctly understood, and more justly appreciated. Possible it is that my own deep reverence and affectionate regard for the writer, may have some degree even of undue influence upon my own mind. But after a most careful perusal, I find no reason to change any one opinion which I had previously formed, except that in which I supposed that he would not stoop to the use of

* Life of Gray.

low expressions. What indeed they are, in a dead or even in a living language, must often be decided by the different tastes of different men. From principle Mr. Fox employed many familiar phrases, which I should have rejected as inconsistent with the gravity and dignity of the historic style. But from his well-known diligence and solicitude in the correction of his own writings, I am persuaded that he would have altered several passages in which men of sense must perceive negligence in the choice of his phraseology, intricacy or laxity in the structure of his sentences, and harshness or feebleness in the rhythm of his periods.

If Demosthenes was content to retort the poignancy, without disputing the justice of the remark made by Pythias, "ἐλλυχνίων ὄζειν αὐτοῦ τὰ ἐνθυμήματα"*—if Plato "τοὺς ἑαυτοῦ Διαλόγους κτενίζων, καὶ βοστρυχίζων, καὶ πάντα τρόπον ἀναπλέκων, οὐ διέλιπεν ὀγδοήκοντα γεγονὼς ἔτη," and if in his tablets were found several variations of the short sentence "κατέβην χθὲς εἰς Πειραῖα,"†—if Cicero doubted whether, as a Homo Romanus, he should write Piræum or Piræa, and whether he should or should not use a preposition when he spoke of it, not as Oppidum, but Locum ‡—if, in his correspondence with Atticus, he anxiously corrected a favourite correction of a favourite passage in lib. i. De Oratore, and thus wrote "*inhibere*§ illud tuum quod valde mihi arriserat, vehementer displicet; est enim verbum totum nauticum: quanquam id quidem sciebam. Sed arbitrabar sustineri Remos, cum inhibere essent jussi. Id non esse ejusmodi didici heri, cum ad Villam nostram Navis appelleretur, non enim sustinent, sed alio modo remigant. Dices hoc idem Varroni, nisi forte mutavit." || If in such great writers Mr. Fox had ex-

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* Vid. Plutarch. in Vit. Demosth.

† Vid. Dionys. Halicar. de Struct. p. 239, Upton's edit. and Quintil. lib. viii. cap. 6.

‡ Vid. Epist. iii. ad Attic. lib. 7.

§ "Postquam *inhibent* remis puppes, ac rostra recedunt."
LUCAN, lib. iii. v. 659.

|| Epist. xxi. ad Attic. lib. 13. Upon the authority of a letter of Tiro, Aulus Gellius informs us that, when Pompey had inquired of some learned men at Rome, whether, in an inscription for the Æd. Victoriæ, which he was about to dedicate, it should be written tertium or tertio, Cicero felt the same uncertainty,

amples of such great diligence, he must have known that the limæ labor et mora were not unworthy of his own taste, or age, his dignified situation as a statesman, or his established fame as a speaker in Parliament. We may trust his good sense for having endeavoured to avoid that Κακόζηλον into which writers are seduced, "quoties ingenium judicio caret et specie boni fallitur;" and we may be assured that he never would have been tempted, "quod recte dici potest, circumire amore verborum, et quod uno verbo patet, pluribus onerare." *

Mr. Fox read extensively; he reflected deeply; but he seldom composed. The remark which Cicero makes upon the qualifications which are necessary for a good speaker, may be applied more directly and more frequently to that exercise of the mind which is necessary to form a very good writer. "Caput est, quod, ut vere dicam, minime facimus, est enim magni laboris quem plerique fugimus, quam plurimum scribere. Stylus est optimus et præstantissimus dicendi effector et magister.,'† This position of Tully is noticed by Quintilian, who, with his usual good sense, has assigned a chapter to the subject in his tenth book, and, with his usual sagacity, demonstrated the necessity "scribendi diligentissime et quam plurimum." Mr. Fox, who carried about him as an author the same artlessness and docility which pervaded every other part of his character, would have profited by the instructions of such masters as Tully and Quintilian.

There is always danger lest the habit of public speaking should have some influence on the mind of a writer, and infuse into the productions of his pen such peculiarities of manner as distinguish

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which, in truth all scholars must sometimes feel, and ingenuously said, "se judicare de viris doctis veritum esse." He therefore advised Pompey, "ut neque tertium neque tertio scriberetur: sed ad secundum usque T fierent Litteræ, ut verbo non prescripto res demonstraretur: sed dictio (i. e. the pronunciation) tamen ambigui verbi lateret." Men of letters, I believe, now write according to the opinion of Varro, which A. Gellius has recorded: "Quarto locum adsignificat, et tres ante factos. Quartum tempus adsignificat, et ter ante factum."—Vid. A. Gell. lib. x. cap. 1. Non. Marcell. cap. 5. par. 50, and Cornel. Fronto, p. 1340 of the Auctores Latini, published Colon. Allobrog. 1622.

* Quintil. lib. viii. Procem. et cap. 3.

† De Oratore, lib. i.

his speeches. This effect is often visible in the political writings of Mr. Burke, though, in justice to that wonderful man, I would except his "Thoughts upon the Causes of popular Discontents;" and we all remember that his admirable work on the Sublime and Beautiful had been prepared for the press before he became known to the public as an orator. It is, however, worthy of remark, that in the rhetorical, philosophical, and epistolary writings of Cicero, scarcely any vestiges can be found of the exuberance and splendour which appear in his orations. We always indeed meet with perspicuity and elegance, and sometimes even with copiousness. But the general character of his style is uniformaly adapted to the matter or the occasion; and though we recognise Cicero, we lose sight of the orator.

"Mille habet ornatus, mille decenter habet."

Mr. Fox, for a time, might have found it difficult to disengage his thoughts or his words from the form which they had been accustomed to assume, and perhaps the order in which they had been accustomed to occur to him, when he was speaking in Parliament. But with all the imperfections which the acutest critic can discover in his History, and which leisure would have enabled him to correct, the excellencies which characterise his best speeches in the House of Commons, often present themselves to our view in the work lately published. In conformity to the precept of Cæsar, "habuit semper in memoria atque in pectore, ut tanquam scopulum, sic fugeret inauditum et insolens verbum." * He shunned the faults into which Hortensius is said to have fallen. When we reflect upon Mr. Fox as a speaker, "longius procedens et in cæteris eloquentiæ partibus tum maxime in celeritate et continuatione verborum adhærescens, sui dissimilior non videbatur fieri quotidie." If we turn to him as a writer, "cum jam honores et illa senior auctoritas gravius quiddam requireret, remanebat idem, et decebat idem." †

In a very elaborate, and, I believe, a rare book of Falster, called Memoriæ Obscuræ, the second chapter treats "de Ingeniis Romanis, quæ Eruditionis et Litterarum gloria absque scriptis

* See Fragment in the Editions of Cæsar.
† See Cicero's Brutus, near the conclusion.

floruerunt." Now it deserves to be noticed, that most of the persons whom Falster has rescued from oblivion, were orators; and this fact would be surprising to us, if we were not prepared to hear it by the mention of other orators, whose names have been preserved to us, and the character of whose style has sometimes been shortly described by Cicero, Quintilian, and the unknown writer of the Dialogus de Oratoribus, subjoined to the common editions of Tacitus. Happy, then, must be the friends of Mr. Fox, that, if any future scholars should write, upon our own countrymen, a book similar to that of Falster upon the Romans, the name of Mr. Fox will not be included among them. Had he lived, indeed, to finish his work, he would have experienced more and more the truth of Quintilian's observation: "Paulatim res facilius se ostendent, verba respondebunt, compositio sequetur, cuncta denique, ut in familia bene instituta, in officio erunt. Summa hæc est rei: cito scribendo, non fit bene ut scribatur; bene scribendo, fit ut cito." * As to the examination of facts, whether admitted into history, or preserved only by tradition, his labour would have been undiminished. But the necessity of all the diligence and all the solicitude which are ascribed to him, must be apparent, when we reflect upon the negligence, or the credulity, or the unfairness of his predecessors; and that history, beyond every other kind of composition, requires the most unwearied perseverance and the most rigorous impartiality, is obvious to our common sense, and has been illustrated by a most judicious writer de Incertitudine Historiæ, in a learned and philosophical dissertation, which you may see in the "Additamentum ad decem Libros Observationum Selectarum ad Rem litterariam pertinentium."—Halæ Magdeburg.

Many may be the faults, which, as Cicero says in the Brutus, "non quivis unus ex populo, sed existimator doctus et intelligens possit cognoscere." But the general character of Mr. Fox's style was purely English; † and, as to the rejection of a word, for which he had not the authority of Dryden, it is a fancy which

* Lib. x. cap. 3.

† "Πρώτη τῶν ἀρετῶν γένοιτ' ἂν, ἧς χωρὶς οὐδὲν τῶν ἄλλων τῶν περὶ τοὺς λόγους ὄφελος· τίς; ἡ καθαρὰ τοῖς ὀνόμασι καὶ τὸν Ἑλληνικὸν χαρακτῆρα σώζουσα διάλεκτος." Dion. Halicarn. Ep. ad Pomp. de Platone, parag. 15.

seems to me not less unwise than the fastidiousness of the Ciceronian sect,* and which Mr. Fox's own example proves to be more "honoured in the breach than the observance." Dryden, with all his numerous and all his exquisite beauties, could not have supplied all the peculiar forms of writing for which an historian has occasion, and if Mr. Fox was determined to employ no expression which English writers of celebrity had not employed before him, he might have found in those writers every word and every combination of words which might be necessary for every purpose of perspicuity and correctness, elegance and strength.

Far be it from me to withhold the smallest portion of that

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* "Quemadmodum," says Falster, "Philosophia, (quod Clemens Alexandrinus dixit) non est dicenda Stoica, nec Platonica, aut Epicurea, aut Aristotelica, sed quicquid ab his recte dictum est, quod docet Justitiam cum veri Scientia. Hoc totum selectum dicendum est Philosophia; sic latinitas non Ciceronia dicenda est, non Terentiana, non Plautina, sed quicquid a diligentissimo quoque scriptore Latino proprie et emendate dictum, id demum civitate Latina dignum judicator." (Vid. Falsteri, Amænitat. Philolog. vol. ii. cap. 11, and Cl. Al. Stromat. lib. i. par 7.) You will not join in any cry of pedantry against me for saying that in the word Ciceronianum, as sometimes used by the modern writers of Latin, there is more propriety than some scholars may perceive at first sight. "Ciceronianum nomen ferri potest, ut recentioribus maxime usitatum. Sed velim antiqui et probati scriptoris locum mihi demonstrari, ubi Ciceronianum nomen, Ciceroniani libri, Ciceroniana merita in Rempublicam dicantur, pro Ciceronis ipsius nomine, libris, meritis. Illius ætate sine dubio Tullianum dicebant quicquid profectum erat a Cicerone aut ad ipsum proprie pertinebat, et si quis adjectivum volebat ad hoc Agnomine ductum, Ciceronium potius dicebat. Sicut a Cæsone dicitur Cæsonium, a Stilicone Stiliconium, a Marone Maronium sive Maroneum, sed ex analogia Ciceronianum debebat esse id quod minus arcte nexum et cum Cicerone conjunctum est, ita ut Ciceronianus esset imitator Ciceronis, oratio Ciceroniana, oratio similis orationibus Ciceronis;" see page 7 of Weiske's preface to his Commentary on the speech for Marcellus, the authenticity of which he has endeavoured to defend, ingeniously, but, I think unsuccessfully, against the criticisms of the learned and acute Wolfius. No man, you will tell me, in the words of Johnson, forgets his original trade. I am not ashamed of mine; and if I had been writing to Mr. Fox, as I now am to you, upon style, he would not have blamed me for remembering such a passage as I now recommend to your perusal.

praise which is due to a Robertson, a Hume, or a Gibbon.* But I must confess, that the style of Mr. Fox approaches more nearly than that of the writers just now mentioned, to the excellence which, in my opinion, is peculiarly becoming in historical compositions. Upon this subject I have long thought in the same way with my illustrious schoolfellow and friend Sir William Jones, and under the protection of his authority and his words I will communicate my own fixed judgment.

"It may perhaps be expected that some account should here be given of the Persian history, which I was thus appointed to send abroad in an European dress, with some remarks on the veracity and merit of its eastern author; but, before we descend to these minute particulars, it will not be foreign from the subject of the present publication, to inquire into the general nature of historical composition, and to offer the idea, rather of what is required from a perfect historian, than of what hitherto seems to have been executed in any age or nation.

"Cicero, who was meditating an history of Rome, had established a set of rules for the conduct of his work, which he puts into the mouth of Antonius in his treatise on the accomplished orator; where he declares 'the basis and ground-work of all history to depend upon these primary laws, that the writer should not dare to set down a falsehood, nor be deterred by fear from divulging an interesting truth; and that he should avoid any just suspicion of partiality or resentment; the edifice, he adds, which must be raised on this foundation, consists of two parts, the relation of things, and the words in which they are related; in the first, the historian should adhere to the order of time, and diversify his narrative with the description of countries; and since, in all memorable transactions, first the counsels are explained, then the acts, and lastly, the events, he should pronounce his own judgment on the merit of counsels; should show what acts ensued, and in what manner they we performed; and unfold the causes of all great events, whether he imputes them to chance, or wisdom, or rashness; he should also describe, not only the ac-

* "Lumina orationis velut oculos quosdam eloquentiæ esse credo; sed neque oculos esse toto corpore velim, ne cætera membra suum officium perdant."—Quintil. lib. viii. cap. 5.

tions, but the lives and characters of all the persons, who are eminently distinguished in his piece; and, as to the words, should be master of a copious and expanded style, flowing along with ease and delicacy, without the roughness of pleadings at the bar, or the affectation of pointed sentences.'*

"If we form our idea of a complete historian from these rules, we shall presently perceive the reason, why no writer, ancient or modern, has been able to sustain the weight of so important a character; which includes in it the perfection of almost every virtue and every noble accomplishment, an unbiassed integrity,

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* "De Orat. lib. ii. 15."

Some of the best observations I have ever seen upon the diction, the topics, and the arrangement of history, may be found in Mr. Hampton's preface to his excellent translation of Polybius. Has it ever occurred to you, my friend, that marks may be traced of two styles, and even two minds in that preface? When I had pointed some instances to the learned and sagacious Sir James Mackintosh, he agreed with me in my conjecture that the Whig translator was indebted for some expansion of his matter, and some embellishments of his language to a Tory auxiliary,† who is known to have been acquainted with him, and who at a later time directed his satire against false alarms, and his eloquence against unnecessary wars.

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† Much of the praise which Hampton's friend in one of his writings bestows upon Knolles's History of the Turks, may be extended to Mr. Laing's History of Scotland. "His style is nervous, elevated, and clear. A wonderful multiplicity of events is so artfully arranged, and so distinctly explained, that each facilitates the knowledge of the next. Collateral events are so artfully interwoven into the contexture of the principal story, that they cannot de disjoined without leaving it lacerated and broken. There is nothing turgid in his dignity, nor superfluous in his copiousness."—Rambler, No. 122.

The ardour of Mr. Laing in the cause of liberty is not disgraced by democratic coarseness or theoretic refinement. His inquiry into the controverted question of Mary's participation in the death of Darnley is minute without tediousness, and acute without sophistry. Whether I consider his sagacity in exploring causes, his clearness in relating facts, his vigour in pourtraying characters, or his ingenuity in unfolding and enforcing principles, I shall ever find reason to lament that the continuation of Hume's history was not undertaken by a writer so eminently qualified as Mr. Laing is, for a task so arduous and so important.

a comprehensive view of nature, an exact knowledge of men and manners, a mind stored with free and generous principles, a penetrating sagacity, a fine taste and copious eloquence; a perfect historian must know many languages, many arts, many sciences; and, that he may not be reduced to borrow his materials wholly from other men, he must have acquired the height of political wisdom, by long experience in the great affairs of his country, both in peace and war. There never was, perhaps, any such character; and perhaps there never will be; but in every art and science there are certain ideas of perfection, to which the works of genius are continually tending, though, like the logarithmic spiral, they will never meet the point to which they are infinitely approaching. Cicero himself, had he found leisure to accomplish his design, though he would have answered his own idea in most respects, would have been justly liable to the suspicion of an illiberal bias in relating the history of his own times, and drawing the several characters of his age.

"The very soul and essence of history is truth, without which it can preserve neither its name nor its nature, and with which the most indifferent circumstances in a barren chronicle are more interesting to a sensible reader, than the greatest events, how copiously or elegantly soever they may be described, in a romance or legend; yet it is strange, that, of so many histories, ancient or modern, European or Asiatic, there should be so few, which we can read without asking in almost every page, Is this true?"*

After some remarks, worthy of his unparalleled erudition and correct taste, upon some ancient and modern historians, Sir William Jones goes on thus:

"The English historians are not to be read without caution. Clarendon himself is often liable to exception, both in sentiment and style; and our language, indeed, was never entirely polished till the present century. I avoid touching upon the works of living authors; lest, in my very preface, I should violate a fundamental law of history, by incurring the suspicion of prejudice for a particular nation, or affection for particular men; but another law obliges me to declare, that there are historians now in

* Preface to Sir William Jones's History of the Life of Nader Shah, &c.

Britain, whose writings have sufficiently proved, that if their subjects were equal to their talents, they would be able to contest the merit of veracity, judgment, and elegance with the ancients themselves. That perfect liberty, which forms the very essence of our constitution, makes it unnecessary for an English historian to flatter any potentate or statesman upon earth; and our language, though inferior to the Greek and Roman, will not yield the prize of energy, variety, and copiousness, to any modern idiom whatever."*

Give me leave, dear Sir, as Mr. Fox would have done, to digress a little to another topic, which the preface of Sir William Jones to his Persian History recals to my memory.

The learned Mr. Thomas Warton, in an inaugural speech, which, as Camden Professor of History, he delivered at Oxford, and which in correctness and elegance far surpasses all his other Latin compositions, has confessed himself unable to understand what is meant by the *lactea ubertas* ascribed to Livy.† Mr. Warton said this in 1786. Now Sir William Jones, in his preface to the History of Nader Shah, which appeared in 1773, had made a similar confession. "It is not easy," says he, "to conceive what the ancients mean by the lactea ubertas of Livy. In many parts of his work he shows great candour and judgment, but his style is not remarkable for ease or copiousness."

The expression to which Sir William adverts must strike every reader forcibly; and in a very long catalogue of editors and phi-

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* Preface to Sir William Jones's History of the Life of Nader Shah, &c.

† "Livius artificio dicendi et facundia vel summis Græcorum par: dignusque qui victoris omnium gentium populi gesta immortalitati traderet. In narrando quidem et describendo perjucundus est; ita tamen regnat et dominatur in concionibus, ita personas induit diversas, et accommodate loquentes inducit, et cum proprietate sustinet, etiam ad affectus permovendos, ut non modo consurgat ad laudem perfecti oratoris, sed et persæpe peritissimi dramatici poetæ specimen præ se ferat. Plenus est dignitatis et gratiæ; non tamen video quid sibi velit Quintilianus, ubi Livii lacteam ubertatem prædicat; nam certe abruptior est paulo, et duriusculus, nec ubique in contextu sermonis facilis, nec simplicitatis illius Herodoteæ satis æmulus."—See page 371 of the second volume of Warton's Poetical Works, edited by the learned Mr. Mant.

lologists, which Drakenborch has inserted in the seventh volume of Livy, there are several* who have adopted the opinion, and even repeated the language of Quintilian. Now it can hardly be supposed that, with all their partiality for Livy, and all their veneration for Quintilian, so many critics would have selected a phrase which not one of them understood. It is not very probable that Quintilian should form a less accurate judgment than Sir William Jones and Mr. Thomas Warton upon the diction of a Roman historian. For my own part, I see no want either of copiousness in the narrative of Livy, or of ease in his speeches, and, like the majority of scholars, I have always been charmed with the felicity of Quintilian's description. I am not conscious of arrogance when I give myself credit for understanding it; and I believe that Quintilian intended to speak comparatively. Let us contrast what he says of Sallust with what he says of Livy in the same sentence: "Neque illa Sallustiana brevitas, qua nihil apud vacuas aures atque eruditas potest esse perfectius, apud occupatum variis cogitationibus judicem, et sæpius ineruditum, captanda nobis est: neque illa Livii lactea † ubertas satis docebit eum, qui non speciem expositionis, sed fidem quærit." ‡

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* Vide Dedicatio Hutteni to the Mogunt edition, Præfat. Gohorii to the Paris edition, 1573, &c. Hieronymus, in Epistola ad Paulinum, alluding to Quintilian, describes "Titum Livium lacteæ eloquentiæ fonte manantem," and several editors of Livy quote the words of Hieronymus with approbation.

† Homer, where his simile is drawn from honey, certainly means to suggest the idea of sweetness only, when he says,

"Τοῦ καὶ ἀπὸ γλώσσης μέλιτος γλυκίων ῥέεν αὐδή."
ILIAD, i.

And thus the Latin Poets:

"Et quasi Musæo dulci contingere melle."
LUCRETIUS, lib. i.

"Fidis enim manare poetica mella
Te solum." HORAT. Epist. lib. i. epist. 19.

But I believe that Quintilian, in his imagery from milk, had in view copiousness. Pliny often mentions lactis ubertatem.—Lib. xx. xxvii. xxviii.

‡ Lib. x. cap. 1.

The lactea ubertas of Livy is indirectly compared with the Sallustiana brevitas, and each of them is represented as a model in many respects unfit for imitation to orators. This would readily be allowed of their narrative, and as to their speeches,* they, like others which we meet in Herodotus, Thucydides, and Xenophon, were the work of the historians themselves, and however they may have delighted antient or modern readers in the closet, they might have produced a very feeble effect upon a Greek or a Roman audience. Some light may, I think, be thrown upon the passage just now quoted from Quintilian, if we turn to another part of his Institutes, where he teaches us "qui legendi sint incipientibus," and where, not generally, but for the particular purpose of forming a public speaker, he prefers Livy to Sallust, and Cicero to both. "Ego optimos quidem, et statim, et semper, sed tamen eorum candidissimum quemque, et maxime expositum velim; ut Livium a pueris, magis quam Sallustium:

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* The most judicious and satisfactory criticisms I have ever read on the speeches written† by the antient historians, are to be found in the New Annual Register for 1783 and 1788. In the former are inserted "Observations upon the Speeches of the Antient Historians from the Abbe de Mably's Dialogues concerning the manner of writing History." The latter contains a very masterly "Essay on the dramatic antient form of Historical Composition, from the Transactions of the Royal Edinburgh Society."

Justin, in lib. xxxviii. cap. 6. gives a full, and what the critics

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† In reading the written compositions assigned to speakers by Livy, Sallust, &c. we should always bear in mind the judicious observation of Cicero, who distinguishes them in their styles from speeches really delivered:

"In historia interponentur, etiam conciones et hortationes; sed in his tracta quædam et fluens expetitur, non hæc contorta et acris oratio." —Orator, vol. i. page 159. Gruter's edit.

The thoughts, and to some extent the words, are adapted to the particular occasion on which they are employed, and to the general character of the person. But we do not find the varied and vehement language of a real speaker. The reader does not expect it. The writer could not furnish it. We are conscious of the illusion, but are at the same time satisfied with the historian, as we are with an artist, when his picture resembles the original.

et hic historiæ major est auctor: ad quem tamen intelligendum jam profectu opus sit. Cicero, ut mihi videtur, et jucundus incipientibus quoque, et apertus est satis; nec prodesse tantum, sed etiam amari potest: tum (quemadmodum Livius præcipit), ut quisque erit Ciceroni simillimus."* Whatsoever may be the difference of opinion among modern scholars upon the justness of Quintilian's observation, little doubt upon the real import of his words can remain with any intelligent reader of the passages which I have just now produced. Whatsoever may be the comparative ease a learner would have found in understanding Cicero, and whatsoever comparative advantage he might derive from attempting to imitate him, still, as we shall see presently, Livy is represented as miræ vir facundiæ, still, as we have already seen, he is classed among the candidissimos scriptores, and still, in the judgment of Quintilian, he would have presented fewer difficulties than Sallust to the mind of a beginner. Whatsoever may be the properties in Livy's phraseology which produced any difficulty at all, we have no clear evidence for maintaining that

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call recta oratio; a speech of Mithridates which Pompeius Trogus had thrown into the oblique form. "Quoniam," says Justin, "in Livio et Sallustio Trogus reprehendit quod conciones directas pro sua oratione operi suo inserendo historiæ modum inceperint." Justin, it is to be observed, (lib. xiv.) gives the speech of Eumenes in the form of recta oratio, and in lib. xviii. the speech of Maleus. Livy himself often gives smaller speeches in the oblique form, and especially the speeches of ambassadors, in lib. xxxi. par. 11. lib. xxxii. par. 8. lib. xxxv. par. 35 and 42. He sometimes mixes both forms, as in the speech of Flaminius, (lib. xxxviii. par. 43.) and in the reply of Æmilius Paullus to Manlius, par. 45.

Tacitus and Cæsar often employ the oblique form. The poets mix them; of which you may see instances in the Æneid, viii. 287, 293, &c. Milton's Paradise Lost, iv. 719, 724, &c. Homer's Iliad, xv. 346, 348 to 353. Apollonius Rhodius, lib. iv. 1702, 1706 to 1709.

In regard to the Roman historians, the oblique form, when continued to any length, as it sometimes is, appears to me languid. The writer in this kind of narrative, as well as in set speeches, expresses his own thoughts, but with less perspicuity, variety, and animation, than he would be enabled to do in the usual and regular form of a speech.

* Lib. ii. cap. 6.

they consisted in patavinity; for the diction of Sallust, to which greater obscurity is ascribed by Quintilian, was certainly free from the adhesion of foreign idiom. Whatsoever may be the merit of Sallust, and I may add Tacitus, in their style, it will hardly be denied that in copiousness, ease, and perspicuity, Livy is superior to both of them. Thus much I may venture to say, without the imputation of assenting to the harsh and acrimonious strictures which Scioppius, in a work called Judicium de Stylo Historico, has heaped together against Sallust and Tacitus.

Before I return to the consideration of Mr. Fox's History, I shall not hesitate to drop a few words upon another passage in Quintilian, which has perplexed rather than convinced some of my learned contemporaries. "In Tito Livio miræ facundiæ viro putat inesse Pollio Asinius quandam Patavinitatem."* Pollio, who was an historian as well as an orator, and whose opinions were less favourable than those of Livy to Roman liberty, might have been induced to throw out this obscure and invidious insinuation by critical refinement, or by literary jealousy, or with views of political adulation to the reigning emperor. Quintilian, we must observe, has recorded, but not expressly adopted it. No antient grammarian, or scholiast, or critic, in such of their writings as have come down to us, has produced one solitary instance of Livy's Patavinity. No philologist among the moderns, however capricious, or however fastidious, professes to have discovered one. The expression itself is not associated with our critical notions of Livy, and has answered no other purpose than that of giving rise to a contemptuous phrase for provincial barbarism, or incongruous and mongrel jargon. Morhoff† has professedly examined the opinion of Pollio, in a dissertation which deserves the attention of every scholar. I lent it to Dr. Johnson, who agreed with me in thinking the arguments of Morhoff satisfactory, and even invincible. I know

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* Lib. viii. cap. 1.

† See from page 475 to page 592 of Morhoff's Dissertationes Academicæ et Epistolicæ, published at Hamburgh, 1699. The Dissertation has been judiciously inserted by Drakenborch in the seventh volume of his edition of Livy, where any purchaser may find, and every scholar ought to read it.

not whether some courtly historian may not hereafter arise among ourselves, and endeavour to fix upon Mr. Fox the charge of violating the English idiom. Doubtless of grammatical errors he is often guilty, and surely faults of the same kind may be found in the writings of Pope, Dryden, Addison, Swift, and sometimes even Johnson. But I very much doubt whether in Mr. Fox's History the oculi emissitii * of the keenest critic could discover Gallicisms, Latinisms, Archaisms, or any other Γλώττας, whether by the word we understand with Aristotle, "verba peregrina," or, with Dionysius and Galen, "verba obsoleta, ideoque inusitata et obscuriora," as distinguished from "verba peregrina." †

"Omnis eloquentia," says an antient critic, "circa opera vitæ est, et ad se refert quisque quæ audit, et id facillime accipiunt quod cognoscunt." ‡ And again he says, "habet omnis eloquentia aliquid commune. Id imitemur quod commune est." § Hence by common consent are allowed those liberties of which the greatest speakers, in their common practice, readily avail themselves. Inversions, repetitions, phrases, some ephemeral and others obsolete, sudden transitions, short and abrupt allusions, daring metaphors, mutilated sentences, long parentheses —all of them may have their proper place at a proper season, and may all of them be approved, if they do not occur frequently, or stand out ostentatiously. By the established laws of sympathy in the human mind, the gestures of a speaker, his tones, and his very looks, may throw a lustre upon what would be obscure, and a grace upon what would be offensive, at any other time, and in any other place. But the eye will not permit us to endure what even the "judicium aurium superbissimum" ‖ has not condemned. Hence in written compositions we look, and are justified in looking, not perhaps for greater excellencies, but for fewer faults. The noble writer of an Address prefixed to

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* Vid. Plaut. Aulul. Act i. Scene 1.

† Vid. Aristot. Rhet. lib. ii. cap. 2. and Poet. cap. 21. and Dionys. de Compos. par. 3. and Galen, in Interpret. Gloss. Hippocrat.

‡ Quintil. lib. viii. cap. 3.

§ Lib. x. cap. 2.

‖ Cicero, in Orator.

the History informs us, that "if Mr. Fox had ever been reduced to the alternative of an inflated or homely phrase, he in all probability would have preferred the latter." With sincere and just deference to the learning and taste of the excellent person whose words I have just now quoted, I must state that no man whose understanding was so cultivated as that of Mr. Fox, could often have been reduced to the necessity of making his choice between that which is inflated and that which is homely. In reading his History, I met with several expressions which I believe not "to have been introduced upon system, but to have crept in through inadvertency," and I could point out many other passages to which my learned and noble friend would perhaps concur with me in applying the observation of a writer whom we equally admire: "Patet MEDIA quædam via: sicut in cultu victuque accessit aliquis citra reprehensionem nitor, quem sicut possumus adjiciamus virtutibus."* I do not profess to "take my notion of historic style from Mr. Gibbon." But if Mr. Fox, from "his abhorrence of any thing that savoured of pedantry or affectation," deliberately admitted into his History some very homely expressions which are now to be found in it, I should not dispute his scrupulous attention to language, but should be compelled so far "to call in question his judgment as an author," and I should say without reserve, "in vitium ducit culpæ fuga, si caret arte."

In consequence of the censures which I heard from many quarters upon the style of Mr. Fox, I transcribed the passages which appeared to me in any degree, or upon any account, objectionable; I distributed them carefully into three classes; and I added a fourth catalogue of sentences, in which the position of the words is artificially inverted. For this property I was not prepared; and yet in no instance is there the smallest appearance of affectation. Every writer feels occasionally the convenience of such inversion in giving clearness and ease to the order of his words, and every good writer will have recourse to it, when it is likely to answer such useful purposes.

To chase with criticism "quod quisque unquam vel contemptissimorum hominum dixerit, aut nimiæ miseriæ, aut inanis jac-

* Quintil. lib. viii. cap. 5.

tantise est."* But the deserved celebrity of Mr. Fox's name, the importance of his subject, and my view of the various motives by which his readers would be disposed to condemn or to praise, increased the interest which I felt in ascertaining the real merits of his work. I was content therefore "difficiles habere nugas." I was anxious to distinguish between the just and the unjust reflections to which his history has given rise, and perhaps other readers to whom the same "labor ineptiarum" was for the same reason less intolerable, have like myself found it agreeable to discover what it were of little use for us to communicate in detail. The real improprieties of negligence meet with fewer advocates and fewer imitators than the false beauties of affectation; and for the purposes of caution to common readers, the instances which the writer in the Edinburgh Review has enumerated in his masterly critique† upon Mr. Fox's History are quite sufficient.

Confiding in his own strength, that acute and eloquent critic

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* Quintil. lib. i. cap. 5.

† I will embrace the opportunity now afforded me for expressing, not only my praise, but my thanks, to those unknown writers in the Edinburgh Review who have favoured the public with their remarks upon the Bill for the Residence of the Clergy, which has passed—the Bill for the Relief of the Roman Catholics, which was unfortunately rejected—and the Bill for improving the situation of Stipendiary Curates, which I hope will not be permitted again to insult the good sense of an English Parliament. Those remarks are accompanied by a train of reasoning which cannot be refuted. They are supported by facts, which every impartial ecclesiastic and every observant layman in England must acknowledge to exist. They are founded upon the most correct and enlarged principles of political economy. They are calculated to promote not only the general interests of society, but the tranquillity, honour, prosperity, and safety of the Established Church. Adapted to the common sense of all readers, and justified by the experience of almost all clergymen, they may be considered as most seasonable antidotes to the contagion of that diseased spirit, which mingles the rashness of empiricism with the stubbornness of bigotry, which stoops without conscious degradation from fanatical visions to secular cares, and which, under the shelter of self-conceit and self-delusion, mistakes intolerance for zeal, officiousness for vigour, censoriousness for innocence, and singularity for evangelical holiness.

will, I am sure, pardon me for observing that the objection which he very properly makes to Mr. Fox for writing "the *then* state of Scotland," may in some respects be extended to that part of the review in which we are told that "the natural tenderness of his disposition enables him to interest us in the description of his after sufferings." True it is that the words before and after are used as prefixes to English words, as in before-mentioned, before-time, before-hand, after-times, after-thought, after-cost, &c. &c. Far also, which relates to place, as then does to time, is prefixed, as in far-fetched; and in colloquial diction we preserve the old form which occurs in the New Testament, "a far country." But I suspect that the reviewer himself in an elaborate work would not have considered the use of before, &c. in composition as supplying the smallest justification of such a phrase as "his after sufferings." We read indeed in the New Testament, "Use a little wine for thine often* infirmities."† Johnson, too, remarks that, in Sidney, soon ‡ has the signification of an adjective, ("a soon and prosperous issue") but he adds, "licentiously, or according to the custom of his time;" and I should say the same of a passage which Dr. Johnson quotes from Clarendon, "the then Bishop of London, Dr. Laud."

Let not the excellent critic to whom I have adverted be offended with me for observing, that he has himself fallen into a colloquial inaccuracy, equal to that which he justly blames in Mr. Fox. Dr. Johnson is said to have reprimanded very roughly one of his friends who in conversation had expressed a wish to "canvass that subject," but Johnson had forgotten that in The

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* I am the more inclined to believe this phrase to have been suggested to our translators by the use of their own age, because they were not led to it by the original "*τὰς πυκνάς σου ἀσθενείας.*" According to the genius of the Greek language, adverbs which relate to time are preceded by an article, precisely similar to the phrase in Mr. Fox's History. "*Ὦ τέκνα, Κάδμου τοῦ πάλαι νέα τροφή.*" (Sophocl. in Œd. Tyr.) "*Οὐδεν δίκαιόν ἐστιν ἐν τῷ νῦν γένει.*" (Euripid. in Temeno, non Tenne. See Valkenaer, Diatribe 15.) "*Οὐ γὰρ ἴση οὐδὲ ἐγγὺς Ἀθηναίων ἡ τότε πολιτεία.*" (Luciani Imagines, sect. 17.)

† 1 Tim. v. 23.

‡ Taylor in his Advent Sermon writes "a seldomer preaching," and "seldome returns."

Vanity of Human Wishes he had himself written, "Search every state, and "canvass every prayer."* Harry Stephens collected with great anxiety, and produced with great triumph, many instances in which Dionysius Halicarnasseus used the very expressions which he had condemned in Thucydides, and with some probability Stephens conjectures that when the judgment of Dionysius was matured, and when he was preparing to write an historical work, he often approved of that phraseology which in the ardour of youth and the petulance of criticism he had before censured.† It is well known to scholars that Moeris,‡ Thomas

* I know not a more striking instance of forgetfulness || than that which Quintilian records: "Didymo, quo nemo plura scripsit, accidisse compertum est, ut cum historiæ cuidam tanquam vanæ repugnaret, ipsius proferretur liber, qui eam continebat." —Lib. i. cap. 5.

† The remarks of Harry Stephens upon Dion. Hal. are inserted, together with his preface to Thucydides, and his letter to Camerarius, in Duker's edition of Thucyd.

‡ As I wish you to know precisely what were the opinions of these grammarians on soloecisms, I hope that you will acquit me of pedantry in recommending to your notice the following passage from page 35 of Reizius de Prosod. Græc. Accentus Inclinatione:

"Soloecismum vocarunt Sophistæ illius temporis, quidquid non esset veteris elegantiæ Atticæ. Phrynichi exemplo, quos probarint auctores, videre licet. Eum Photius narrat probasse hos tantum, primo quidem loco—Æschylum, Sophoclem, Euripidem; secundo loco, Platonem, Demosthenem, et Æschinem Lysaniæ filium; tertio denique loco, Aristophanem, Thucydidem, Xenophontem, reliquos novem oratores, Critiam Calæschri filium, et Antisthenem. Hos igitur Sophistæ ita probabant, ut quæ illi non usurpassent vocabula et loquendi genera, hæc tanquam barbara et soloeca repudiarent. Eorum pars deterior, ut fit, scriptores æquales etiam optimos ac disertissimos, qui non omnia quæ nova essent aspernarentur, deridebant et contemnebant: quum interim ipsi non modo essent maxime jejuni atque inficeti, sed ne dedicissent quidem satis, neque quid antiquum, neque quid

|| Let me be pardoned for adding one more instance of faults committed by censors. Hieronymus, Cicero tells us, had collected from Isocrates, "triginta fortasse versus, plerosque senarios, sed etiam anapæsta. * * * * Sed tamen hic corrector, in eo ipso loco quo reprehendit, emittit imprudens ipse senarium."—Orat. p. 168, ed. Gruter.

Magister, Phrynichus, and other grammarians, have often reprobated such words as the most approved writers have employed.* The author of a very entertaining and very instructive work, called Solœcista, and ascribed, but with little probability, to Lucian, has pointed his ridicule against many expressions which occur in the best authors. It has sometimes been my own lot, as a writer, to violate the rules which, as a teacher, I had prescribed to learners, and perhaps there is no man of letters who may not find reason now and then to apply gravely to himself the following question: "Ἀράγε ὁ γνῶναι τὸν σολοικίζοντα δεινὸς, οὗτος καὶ φυλάξασθαι μὴ σολοικίζειν δυνατός;"†

Mr. Fox's History, after all, is an "ὀλίγη λιβὰς," and though it cannot be said always "καθαρή τε καὶ ἀχράαντος ἀνέρπειν," it must be allowed by every candid critic to flow "πίδακος ἐξ ἱερῆς."‡ I know not whether in the progress of his work Mr. Fox would have employed that kind of reasoning which "unfolds a general view of the causes that influence the character and disposition of the people at large," and which, in the opinion of the Reviewer and my own, are "essential to the true perfection of history;" but, if I mistake not, the understanding of Mr. Fox was thoroughly qualified for such investigations, and his work even now is "more full of argument, and what is properly called reflection, than most modern historians with whom I am acquainted."§

The observations strewed by Mr. Fox over his work recal to

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rectum omnino et elegans esset, dicerentque plurima non tantum nove, sed etiam prave atque absurde."

Wolfius, the learned annotator upon Reizius, very properly refers us to page 39 seqq. of Pierson's Preface to Moeris, where the same subject is discussed very copiously and judiciously. I shall not quote the words of Pierson, because his edition of Moeris is a much more common book than the work of Reizius.

* I hope not to be accused of pedantry for supporting my assertion by a few instances. Vide Moeris on προσβαίνειν, which is really an Attic word, as distinguished from ἀναβαίνεσθαι—T. Magister in voce Δρεπάνη—and Phrynichus in ἴγδιν (which is an older and better reading than ἴγδην) which he rejects, when he prefers Θυείαν.

† Luciani Solœcista, sect. i. ‡ Callimachi Hymn. in Apoll.

§ See Edinburgh Review.

my mind Addison's description of fine writing. They are natural without being obvious. They by accident, rather than design, exhibit the peculiar * and amiable character of the writer. They grow out of the subject, and "to every seed" of morality or policy which is "sown" in the narrative they give as it were "its own body." In truth, this History may be compared to a country in which the beauties that diversify the scenery bear no resemblance to the profusion and gaudiness which betray the solicitude of art, but are the native and spontaneous produce of the soil, diffuse a fragrance which refreshes the senses without overpowering them, and are decked with colours, sometimes mellow but without faintness, and sometimes glowing but without glare.

Do we not sympathize with Dr. Johnson when he tells us that the English Dictionary was "written, not in the soft obscurities of retirement, or under the shelter of academic bowers, but amidst inconvenience and distraction, in sickness and in sor-

* In the pathetic close of the narrative which Mr. Fox has given us of Argyle's death, there are certain φωνάντα συνετοῖσι which may lead us to suspect that he, at the moment, had in view the possibility of a similar fate to himself, if he ever should be placed in similar circumstances. Reflection, habit, principle, sensibility, all the pure and all the noble qualities of nature acted in mild and sweet concert upon the mind of the writer, and they awake in the reader every tender and every generous sympathy of pity for ideal suffering, and reverence for real virtue. Of the interest created in men of genius by these imaginary situations, when self-love and self-respect recommend themselves by attendant simplicity and sincerity, we have a striking instance in a very eloquent passage, where Bishop Warburton describes Mr. Bayle as "a man who, to the utmost strength and clearness of reasoning, has added all the liveliness and delicacy of wit, and who, pervading human nature at ease, struck into the province of paradox, as an exercise for the unwearied vigour of his mind." He who thus writes of other men must have experienced in himself something similar to that property which he describes. When the pen of Warburton was employed upon a passage where so much originality is united with such vigour in the conception, and so much ease with such dignity in the language, a *vox intus* must have whispered to him again and again,

"Mutato nomine de *me*
Fabula narratur."

row?" Why then should we not do Mr. Fox that justice which the best feelings of our heart will not permit us to refuse to Dr. Johnson? Mr. Fox's History was composed amidst many interruptions from the difficulty of procuring authentic papers, from the tardy and irksome operations of the mind, when it has to methodise and qualify probable conjectures, in opposition to long received but unfounded assertions, from the toil of elucidating obscure or comparing contradictory statements, from the bustle of party, from the fatigues of office, from the languor of approaching disease, and from those sweet endearments which he found in the society of a beloved family and long-tried friends, and which to such a man were far more interesting than the prospect of posthumous fame.

Really and professedly the work of Mr. Fox is "incomplete and unfinished."* But whatever may be for a time the success of criticism in the attempts that have been made to depreciate the merit of it, the season is not distant when the writer, if he were living, might exclaim with a well-known poet of antiquity,

"ἀβά—
Πιστός εἰμι φελλὸς ὡς
Ὑπὲρ ἕρκος ἅλμας."†

Though objections may be raised against the disposition of the parts, the work will still be entitled to the name of a history.‡ We know that Dionysius, in his letter to Pompey, "περὶ Πλάτωνος," has with great severity criticised Thucydides in his choice of a "ὑπόθεσις," which is neither "καλὴ" nor "κεχαρισμένη," in his comparative ignorance "πόθεν τε ἄρξασθαι καὶ μέχρι τοῦ προελθεῖν δεῖ—τίνα δεῖ ἐπὶ τὴν γραφὴν πραγμάτα παραλαβεῖν, καὶ τίνα παραλιπεῖν—διελέσθαι τε καὶ τάξαι τῶν δηλουμένων ἕκαστον ἐν ᾧ δεῖ τόπῳ," and in that diathesis of the writer himself, which is "αὐθέκαστος καὶ πικρὰ, καὶ τῇ πατρίδι τῆς φυγῆς

* See Lord Holland's Preface. † Pindar. Pyth. 2.

‡ "Τῶν συγγραμμάτων, ὅσα μὲν ἂν ᾖ κατὰ τὴν λέξιν, ἢ κατὰ τὸν χειρισμὸν, ἢ κατ' ἄλλο τι διαμαρτάνηται τῶν ἰδίων μερῶν, ἀντεχήται δὲ τῆς ἀληθείας, προσίεσθαι φησὶ τὸ της ἱστορίας ὄνομα τὰς βίβλους· ὅταν δὲ ταύτης παραπέσῃ, μηκέτι καλεῖσθαι δεῖν ἱστορίαν."—Polyb. Megal. Hist. lib. xii. sect. 5.

μνησικακοῦσα." In all these respects he decidedly prefers Herodotus to Thucydides, and yet another Greek writer, who in learning and talents was not inferior to Dionysius, composed a well-known work "περὶ τῆς Ἡρόδοτου κακοηθείας." Modern scholars read with attention the censures both of Dionysius and Plutarch, but they do not read with less attention, with less profit, or less delight, the works of Herodotus and Thucydides themselves. The secret charm, which acts upon the readers of Mr. Fox's History, and which ultimately will preserve the fame of it from the attacks of criticism, is to be found in his unfeigned and unceasing regard to truth. He is equally exempt from that deliberate falsehood which is utterly inexcusable, and from that ignorance of truth which a great historian of antiquity allows in some cases to be venial.* In the statement, and, where it was possible, the solution of doubtful evidence, in developing the properties of actions and the characters of agents, in applying to the dark and crooked machinations of human policy those simple but hallowed rules of morality which our unprejudiced judgments, and our uncorrupted feelings invariably approve, Mr. Fox has discharged his trust with such ability as rarely has been equalled, and such fidelity as never has been surpassed. He has rescued his readers from those delusions to which they were exposed from the blunders of Dalrymple, the calumnies of Macpherson, the partial decisions, the disingenuous omissions, and the captivating but sometimes unauthorized discussions of Mr. Hume. In telling the story of the times of which he treats, he distinctly and fully lays open to our view the servility and profligacy of English ministers, the want of foresight, and want of moderation in many of our English ecclesiastics, and the meanness, insincerity, insatiable ambition, and odious cruelties of two royal oppressors.

The conductors of the British Critic professedly decline giving "their opinion of the genius of Mr. Fox for historic composi-

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* "Δύο μὲν τρόπους φαμὲν εἶναι ψεύδους· ἕνα μὲν τὸν κατ' ἄγνοιαν, ἕτερον δε κατὰ προαίρεσιν, καὶ τούτων δεῖν τοῖς μὲν κατ' ἄγνοιαν παραπαίουσι τῆς ἀληθείας, διδόναι συγγνώμην· τοῖς δὲ κατὰ προαίρεσιν, ἀκαταλλάκτως ἔχειν.—Polyb. Megal. Hist. lib. xii. sect. 5.

tion." They grant that "if age had moderated that sanguine temperament which made him hunt after extremes in facts and in principles, there is enough in his work to shew that he might have become a fine historian." They represent what they think "the wrong placing of some parts of his history, and the great disproportion of others, as being only offences against the mechanical laws of composition, and, as such, easily avoided." They speak of "numerous admirers, who firmly believe that every thing which was the product of his pen must have been a faultless model of excellence in its kind." "Id quia volunt credunt quoque" * may be true of many readers, and possible it is that the acknowledgments which I have made upon the imperfections of Mr. Fox's style may not expiate my guilt in praising it, nor protect me from being classed with the herd of blind and abject idolaters. But I should beg leave to remind my accusers that in our own country, and our own times, there is another class of men, who are equally numerous, and equally clamorous, with the panegyrists of Mr. Fox, and who would be eager to depreciate every excellence, and exaggerate every defect that can be found in him, as a statesman, a speaker, a writer, and a man.

The conductors of the British Critic controvert the conclusions which Mr. Fox has drawn from Barillon's correspondence. They peremptorily deny that James had applied for, and Louis XIV. promised him his aid to reduce England to an absolute monarchy, so far as that point could be established by the papers of Barillon. They maintain that "however the general tenor of the papers of Barillon gave a semblance of probability to Mr. Fox's opinion that James pursued the general establishment of the faith of the Roman church in these kingdoms with a zeal less ardent than that which actuated him in his plan to establish absolute monarchy, yet it can be shown, upon the authority of James himself, that his overweening confidence in the infallibility of the reasons producing his own religious conviction led him into the most singular of errors; that of supposing that the admission of a toleration must of necessity be ultimately followed by the conversion of the whole body of people to Romanism." Here a wide field for discussion opens itself to any disputant, who might

* Quintil. lib. vi. cap. 2.

be more disposed than I am to examine the soundness of the Reviewer's arguments, and the tendency of his positions. He might say that Mr. Fox cannot be blamed for not qualifying his opinions by the evidence of papers which he had never read—that, according to the Reviewer's own concession, "those opinions have a semblance of being founded on the general tenor of Barillon's papers," which Mr. Fox had read—that the projects which James in his old age and in exile had prepared for the instruction of his son, and, as he imagined, his successor, are not direct and decisive proofs of the objects which he pursued while he was on the throne—that from change in external circumstances, his primary view of altering the government might have become secondary, and his once secondary view of subverting the English church might have become primary—that the attainment of this end might in his estimation be a powerful mean for the speedier and fuller attainment of another end—that men sometimes do not see distinctly, and sometimes will not acknowledge ingenuously, the motives by which they are really actuated—that James might display his piety for the very purpose of concealing his ambition—that to profess his design of introducing a new, and, as he believed, a true religion, would be meritorious—that to proclaim any ulterior design of destroying totally the liberties of a people would have been unsafe—that a professed zealot readily excuses, and even applauds himself, but that an oppressor in exile does not openly invite advocates or auxiliaries, while he has not the power of crushing the refractory, and rewarding the obsequious.

My esteem for some ingenious and learned men, who are known to write in the British Critic, prevents me from stating many of the objections which their remarks have suggested to me. Let me rather perform the less ungracious task of allowing their diligence in examining Barillon's papers, of congratulating their good fortune in having once had access to an important manuscript which no longer exists, and of commending their zeal and fidelity in communicating its substance to an inquisite and impartial public. The analysis which they took of that document in 1777 convinces me that the prejudices of James were unsubdued by the discipline of experience, and that the leisure afforded to him by long and inglorious banishment,

was employed in maturing that system which he had formed imperfectly before his accession to the throne, and which he had pursued with a strange mixture of cunning and rashness, imbecility and violence before his abdication. It shows his folly in considering it as certain, that if a toleration were to be established, the people, whom he had provoked by his undisguised attachment to what he conceived the true religion, would in time be won over to it by the establishment of a toleration—his inconsistency, in regarding the bulk of that "very people as too enlightened to put themselves into that situation without a force which could oblige them to it"—his arrogance in holding that "the king should always be in such a state that subjects should always look up to him with obligation for not violating their privileges"—his hypocrisy in decoying the members of a Protestant church and Protestant dissenters to become instruments of introducing a religion which they disbelieved, dreaded, and then detested—his subtlety in assigning to them military employments for the purpose of counteracting their political principles—and his unalterable determination "to be satisfied only with such a share of power as would have placed absolute authority too nearly within his own reach," and so to alter our modified monarchy, that in the hands of a skilful and vigorous successor, animated by a father's example, and needing not his wariness, it might have been speedily converted into a despotism. If desires thus unconstitutional were the principle and main spring of his plan of government, the monarchy of England would by his success have been instantly "assimilated to that of France," and as the country would have had no security against a further increase of physical strength in the Crown, it must in a short time have resembled a despotism in appearance, and approached it in reality. In the indulgence of ambition, as of every other inordinate passion, when the opportunity and the means are within the reach of such a being as man, in such a situation as royalty

"nemo
Peccandi finem posuit sibi."*

Under every possible aspect of the question, and with every

* Juv. Sat. xiii.

probable calculation upon the evidence, the reign of James II. supplies the most instructive lessons to subjects of every class, and to Protestants of every denomination. If Barillon's correspondence proves no more than some respectable critics of our own age allow to be proved by it, the king's own papers, as lately produced by those very critics, contain enough to justify our fixed disapprobation, and unbounded fears. If Mr. Fox be right, as I believe him to be, in the order * which he assigns to

* A kind of side light is thrown upon the real views, or at least the real character of James II. by his conduct to the inhabitants of Maryland. The settlement of that colony was made under the auspices of Lord Baltimore, by his brother, and about two hundred persons, Roman Catholics, and most of them of good families. "The free toleration" which his Lordship allowed, "for all who professed the Christian religion, of whatever denomination, and which was never in the least instance violated, encouraged a great number, not only of the Church of England, but of Presbyterians, Quakers, and all kinds of Dissenters, to settle in Maryland, which before that was almost wholly in the hands of the Catholics. Lord Baltimore, though guilty of no mal-administration in his government, though a zealous Roman Catholic, and firmly attached to the cause of King James the Second, could not prevent his charter from being questioned in that arbitrary reign, and a suit from being commenced to deprive him of the property and jurisdiction of a province granted by the royal favour, and peopled at such a vast expence of his own. But it was the error of that weak and unfortunate reign, neither to know its friends nor its enemies; but, by a blind precipitate conduct, to hurry on every thing, of whatever consequence, with almost equal heat, and to imagine that the sound of the royal authority was sufficient to justify every sort of conduct, to every sort of people. But these injuries could not shake the honour and constancy of Lord Baltimore, nor tempt him to desert the cause of his master. Upon the revolution he had no reason to expect any favour; yet he met with more than King James had intended; he was deprived, indeed, of all his jurisdiction, but he was left the profits of his province, which were by no means inconsiderable."—European Settlements, vol. ii. p. 230. Lord Baltimore, though a sincere and even persecuted Papist, was capable of tolerating Protestants. James the Second, though he loved Popery very well, appears to have loved despotic power much better. William the Third was favourable to the cause of Protestantism in every part of the world. He restrained the power of the Roman Catholics in Maryland, where, under a pro-

the intentions of James, the church must have fallen an easy prey to the zeal of the King, when his love of arbitrary sway had been gratified by his victory over the state. If Mr. Fox be wrong, the church would have been sacrificed as the first victim, and from the co-operation of religious fervour with political attachment in a people newly converted, the triumph of James over our civil liberties must soon have followed. If the enactment of the habeas corpus act was disagreeable to the King, when he reflected upon it in his retirement, because, as he then conceived, it rendered a standing army necessary, we can hardly suspect him of any permanent reluctance to yield to such necessity, while he wielded the sceptre.* But if the act had been repealed, when the King had a standing army at his command, the liberty of the subject would have been deprived of its best security at a crisis the most formidable, and under a monarch who looked upon every accession of strength to his subjects, as an obstacle to his own pursuits, and an encroachment upon his

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prietor less enlightened or less generous than Lord Baltimore, it might have been abused to the annoyance of the new settlers. But he forgave the opposition of Lord Baltimore, and his Roman Catholic adherents, he respected their property, he tolerated their religion, he set an example of wisdom and justice, which in a short time his American subjects were graceless enough not to follow, for "upon the revolution, when Power had changed hands in the province, the new men made but an indifferent requital for the liberties and indulgences they had enjoyed under the old administration, deprived the Catholics of all the rights of freemen, adopted the whole body of the penal laws of England against them, and would, in all probability, have gone to the greatest lengths in the same spirit, if the moderation and good sense of the government of England had not set some bounds to their bigotry."—European Settlements, vol. ii. p. 231.

* In point of fact "he told the two Houses, that the militia in which the nation trusted, having been found, during the late rebellion, altogether insufficient for the safety of government, he had increased the regular forces to double of their former number: and demanded a fresh supply for the support of this additional force."—See Russell's Mod. Hist. vol. iii. page 457. The King, who had doubled his army, under the plea of a rebellion already subdued, would not have been very scrupulous about increasing it, if his subjects had continued their opposition to the establishment of Popery, and the extension of royal prerogative.

own claims. If the project for toleration had been so far carried into execution by lenient measures as to make way for the establishment of Popery, the loyal ecclesiastics who had extolled passive obedience would have been deceived and degraded. But if stronger measures had been requisite to give effect to such a scheme of toleration, leading to such consequences, the judicial campaign of Jefferies, and the military massacres of Kirk may teach us what was to have been expected from the equity of judges, the tenderness of soldiers, and the clemency of a king, visionary without genius, precipitate without courage, emboldened by partial success, irritated by partial resistance, besotted by the spells of superstition, and depraved by the lust of domination. Contemplating the awful reverses of fortune, the detections of artifice, and the defeats of outrage, which the history of James presents to us, while we condemn the tyranny of his actions, we may give him credit for the sincerity of his faith —we may pity what we may suppose to be his religious mistakes —we may make some allowances for his political prejudices— but, as consistent churchmen, and as free-born Englishmen, we ought to bear in mind the mischiefs which must have flowed from those mistakes and those prejudices, if our forefathers had not delivered themselves and their posterity by a well-timed and well-conducted revolution.

The Bishops, I grant, did well in preferring the church to the monarchy, when they were compelled to make their choice, and I further grant that they are not to be accused of inconsistency, because they never defended such temporal power in the King as in their judgment would have enabled or authorized him to overturn our ecclesiastical establishment. It must however be acknowledged, that an earlier discovery of the dangers which were gathering round them would have done honour to their sagacity, and preserved them from many rash professions, and many perilous compliances. It can hardly be denied, too, that the events which gave rise to the bill of exclusion in a former reign,* and the disputes which followed it, were sufficient to

* I mean that of Charles II. The attachment of ecclesiastics to Charles I. is more excusable, for he firmly supported the English Church. "The Court of Rome, by its agents the Jesuits,

justify a little more caution, and a little more steadiness than were manifested by some of our prelates, or by the University of Oxford. Warned by the example of their forefathers, the ecclesiastics of these days may learn to stand aloof from the first approach to extremes of any kind, to distrust the specious promises of zealots, or bigots, or hypocrites, "aras et sceptra tueri," and to meditate upon the latent but powerful causes by which "ambitio malesuada ruit."* Wary without timidity, and firm without

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endeavoured in the first instance to gain the King and his party, and by their means to crush the Puritans. When the steadiness of the King to the Church of England disappointed them of this object, they turned against him, and were accomplices in his ruin."—Symmons's Life of Milton, p. 186. At this distance of time it must appear strange to us, that they who remembered the constancy and fidelity of the father in his opposition to the Church of Rome, did not take an earlier alarm at the designs of the son in favour of that church. Their judgment perhaps was blinded by their favourite doctrine of non-resistance, and their inveterate hatred of the Puritans.

* These were the two mottos on the medals that were struck after the execution of Monmouth. We shall readily allow that unfortunate nobleman to have been a rebel. But what name shall we assign to the sovereign who put Monmouth to death without the formality of a trial, suffered Mrs. Gaunt to be burned alive for her charity to the wretch that betrayed her, and resisted all applications for the pardon of Lady Lisle, though "it was well known that her heart had ever been loyal," and that her son, by her commands, had been "sent to fight against the rebels whom she was accused of harbouring?" James, it seems, excused himself by the promise he had made to Jefferies not to pardon the unfortunate lady. But was this King, who in the beginning of his reign "passed for a man of great sincerity and great honour," equally attentive to another promise which he had given before the Privy Council, and repeated in the discourse which he afterwards made to his Parliament—the promise of governing according to the laws, and of preserving the established religion? When James, upon his accession to the throne, professed before the Privy Council his "resolution to maintain the established government, both in church and state," what was the language of his courtiers? "We have now the word of a king, and a word never yet broken." But he soon did break it, for the whole of his short reign, as Mr. Hume allows, consisted of attempts always imprudent, often illegal, sometimes both, against whatever was most loved and revered by the nation. Whatever

obstinacy, they will sometimes infer the tendency of measures from the characters of men. Collecting principles from observation upon past events, they will ascertain the true value of precedents, as applicable to the present state of public affairs—they will learn not only to reverence and support the legitimate prerogative of the crown as inseparable from the real interests of the church, but to confide in it as amply sufficient to protect them, while it is neither violently enlarged, nor insidiously contracted—they will never prostitute learning in the service of adulation, never sacrifice religion to worldly policy, never violate their own trust, nor endanger their own welfare by contending for more or approving of less than the constitutional rights of the throne. Such an alliance between Church and State is very intelligible and very important—it is compatible with the just pretensions of both—it is adapted to the proper uses of both—and, when accompanied by a spirit of moderation in the priesthood, and of patriotism in the sovereign, most conducive will it ever be to the stability of the government, and the happiness of the community.

Experience has shown the impolicy of the Star-chambers and Inquisitions. Governments have now the evidence of facts to justify them in stretching forth the arm of their protection, and in doling out something more than the usual pittance, even of their favour* to all persons who, "calling and professing themselves Christians," have the testimony of their own conscience for having been "guided in the way of truth." But the spirit, which so often disguises, from ourselves and from other men, the deceitfulness and malignity of persecution, has been convicted of equal hostility to the moral and intellectual improvement of

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extenuations may be urged for his exercise of the dispensing power, other parts of his conduct can never be vindicated by "reason founded on such principles as are usually admitted by lawyers."—See Hume, v. last p. 247. edit. 1782.

* Of such favour, as far as it has been asked by the great body of Roman Catholics, and might, in my opinion, be safely granted by Protestants, I should say with Old Hesiod,

"Πλείστη δὲ χάρις δαπάνη τ' ὀλιγίστη."

Op. et Dies. v. 723.

the human species, to the comfort of individuals and the harmony of society, to the dictates of sound philosophy and the precepts of pure religion.

As to religious liberty, it was rather the slow effect of our reformation than the professed ground upon which our reformers acted, even while the principle of it was virtually assumed in their actions, and when the struggles of religious sects, newly awakened to a sense of their rights, had stirred up erroneous and extravagant notions upon the degree to which those rights were to be extended. The arguments employed in opposition to them gradually brought the fundamental truths upon which toleration is rested more nearly and more distinctly within the view of the most temperate opponents to the church of Rome. Our knowledge upon the subject is now increased, our passions have very much cooled, and, at this distance of time, when a man, whether Protestant or Romanist, looks back to the violences into which all parties were precipitated, upon our first separation, the history of that tumultuous age will give him too much reason to exclaim "Iliacos intra muros peccatur, et extra."*

Among the numerous blessings for which we are indebted to the accession of William III. let it not be forgotten that the genuine principles of religious freedom have been more diligently examined and more widely disseminated. The light of knowledge has restored to their native comeliness and brightness

* Warburton describes the infirmities of the first reformers in the most animated language. "The spirit of persecution has a marvellous malignity in its nature: so that when every other iniquity of papal power had now been detected and expelled, this still stuck behind.

"There is scarce a material error in the Church of Rome which doth not soothe or cherish some of our corrupt passions and prejudices. But persecution flatters them all. It flatters our spiritual pride, the vanity of superior knowledge, and a purer faith. It confirms our bigotry, the mistaken zeal for the honour of God and holy Church; and it supports our ambition, the itch for mastery and misrule. Were it not for so powerful a bias, this iniquity, which had most imbittered the thraldom of our first reformers, and kept them longer in their chains, must on their first deliverance have been immediately detected and marked out for execration."—Warburton's Discourses on Church Authority.

many truths which, viewed as they once were, in the faint twilight of uncertainty, or through the cloudy medium of controversy, had assumed shapes and colours not really belonging to them: and even from error it has cleared away many imaginary deformities, which in seasons of turbulent or partial discussion had disgusted the pious and alarmed the contentious. In the present condition of the world, that restless and relentless temper which once actuated the members of the church of Rome, is visibly assuaged, a spirit of inquiry has imperceptibly in speculative points produced a spirit of moderation, and few, if any, of the practical mischiefs which Popery might formerly have brought down upon us, are any longer to be dreaded in our own country. Even those few may be ascertained by amicable discussion, and averted by sound discretion. Gladly, therefore, should I hail the day in which the religious tenets of the Roman Catholics should not be permitted to obstruct the full recovery of their civil rights, and in which the Church of England, providing at once for its own interest and its own honour, should display to every other church in Christendom a glorious example of "holding the faith in unity of spirit and the bond of peace."

For my part, though it may be my lot to differ from the church of Rome in several doctrinal points more widely than some of its fiercest opponents, I shall always think it unworthy of me, as an Englishman and a Protestant, to treat the members of that church as incorrigible outcasts from civil society, and stubborn apostates from all religious truth. I shall never cease to explore the good as well as the bad effects of the Papal power in ages* when the rude barbarism and military ferocity of European nations seem to have been checked by no restraints more efficacious than that power, so far as history has set before us the

* After writing this sentence I had the satisfaction to find that Mr. Gibbon was of the same opinion. "The authority of the priests operated," says he, "as a salutary antidote. They prevented the total extinction of letters, mitigated the fierceness of the times, sheltered the poor and defenceless, and preserved or revived the peace and order of civil society. But the independence, rapine, and discord of the feudal lords were unmixed with any semblance of good."—Ch. 61.

order of events, or the operation of causes. I shall always remember that by the monastic institutions were preserved to us the means of acquiring that knowledge which, co-operating sometimes from accident and sometimes from design, with other circumstances, has enabled men in all countries, whether Catholic or Protestant, to become progressive in the better use of their faculties and the better discharge of their duties. I shall always look back with triumph upon the contributions which foreign Catholics have made to the arts, to science, and to every branch of polite learning, whether ancient or modern. I should often remind my countrymen, that English poetry, and the English language have been enriched by a Dryden and a Pope, who, if they had lived in our own days, and had ceased to "be fined and taxed for" their notions of "hereditary right," might yet have complained, like other "sufferers" of "certain laws," which continued to deny many "posts of profit and trust"* to the Catholics on account of their religious opinions alone.

Attending to history not less than theological controversy, I shall always bear in mind "that however at the æra of the Crusades the Latins of Europe were below the Greeks and Arabians in learning, industry, and art, their successive improvements and present superiority may be ascribed to a peculiar energy of character, to an active and imitative spirit unknown to their more polished rivals"†—"that the Greeks were stationary and retrograde, while the Latins were advancing with a rapid and progressive motion"‡—"that the character of the man prevailed over the interest of the Pope in Nicholas V. who was the friend and patron of the most eminent scholars of his age"§—"that Florence, and the rest of Italy were actuated by a similar spirit"—that Grocyn, Linacer, and Latimer, who introduced the knowledge of the Greek language into the University of Oxford, had previously acquired their own knowledge of it in the Papal dominions—that in those dominions the learned Greek refugees from Constantinople met with protection and encouragement—that Leo X. and other Popes were the munificent patrons of scholars—and that even in our own times the contents of ma-

* See Pope's imitation of Horace's Second Epistle, book ii.
† Gibbon, chap 61. ‡ Ch. 66. § Ch. 66.

nuscripts, treasured in the libraries of Roman Catholics, have been freely communicated for the use of the two learned English Protestants in their meritorious labours on the text of the Hebrew Scriptures and the Septuagint.

Knowing that mixture of wisdom and folly, good and evil, which pervades the intellectual and moral world—disapproving, in some respects, the use of images in the church of Rome; and yet looking to the collateral effects of it on those elegant or useful arts which flourish in civilized life; I shall always avow my assent to the remarks of a judicious traveller, who tells us that "from the controversies of the Greeks about abstruse and mystical questions, the personal interference of their Emperor in ecclesiastical affairs, and the indiscriminate rage of the Iconoclasts, who in the eighth century had destroyed, not only the remaining statues of classical antiquity, but those of the ruder ages found in churches, we may account for the decline and fall of the arts in Greece—that if, upon the removal of those arts to Rome, the dogmas of the Catholic religion had been equally adverse to them, the same neglect and subversion must have happened—but that, in the western division of the church, the crowded niches evince the veneration in which the statuary was there holden, while the art itself was considered as unholy in Greece, and no encouragement was given to the artist."*

I shall always reflect with pleasure upon the agreeable and useful qualities, the manners and accomplishments, the solid virtues and exemplary devotion of many individuals of the Catholic persuasion with whom it is my good fortune to be personally acquainted. I shall always honour the self-denial, and commiserate the sufferings both of them and their forefathers, because I know that neither hope nor fear, neither ambition nor avarice, neither the experience nor the expectation of unmerited severities, has shaken their firmness in adhering to the opinions which are not my own. I shall always be ready to confess that, according to my views of human nature, the tares of error are seldom rooted up rudely without disturbing the wholesome seeds of truth, that the downfall of superstition is not invariably followed by the empire of reason, and that in

* Dallaway's History of Constantinople, p. 109.

the present state of things the sudden, violent, and entire destruction of the Papal power might lead to consequences most injurious to the good morals of those persons who are now accustomed to obey the Bishop of Rome as their spiritual head only. I shall always maintain openly and unequivocally that, in far the greater part of those doctrines which the Church of England has classed among the essential truths of Christianity, the Church of Rome has long professed, and continues to profess the same belief.* I shall always acknowledge with gratitude that chiefly to the literary as well as the religious zeal of our papal ancestors, the English Universities are indebted for "great and goodly cities, which we builded not; for houses full of all good things, which we filled not; for vineyards and olive-trees, which we planted not;"† for statutes and ordinances which, after the lapse of centuries, and after a succession of mighty changes, both in private and public life, have not ceased to be profitable to learning, morals, and piety; and for means most abundant and most efficacious to guide, assist, and encourage our rising youth in every pursuit which adorns and invigorates the human mind. When we "have eaten and are full, then let us beware lest we forget" the wisdom, munificence, and generosity of those founders, who "brought us forth out of the land of Egyptian darkness, and from the house of intellectual bondage."

"And now if men will say, I persuade to indifferency, there is no help for me, for" in condemning James II. "I have given reasons against it; I must bear it as well as I can; I am not yet

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* "If mere dissent from the Church of Rome be a merit, he that dissents the most perfectly is the most meritorious. In many points we hold strongly with the church. He that dissents throughout with that church will dissent with the Church of England, and then it will be a part of his merit that he dissents with ourselves:—a whimsical species of merit for any set of men to establish."—Burke's Letter to Sir H. Langrishe. "There never has been a religion of the state (the few years of the parliament only excepted), but that of the episcopal Church of England; the episcopal Church of England, before the reformation connected with the see of Rome, since then disconnected, and protesting against some of her doctrines, and against the whole of her authority, as binding in our national church."—Dallaway's History of Constantinople, p. 109. † Deut. vi.

without remedy as they are, for patience will help me—let them take their course, and I'll take mine—only I will take leave to consider this (and they would do well to do so too), that unless Faith be kept within its own latitude, and not called out to patrocinate every less necessary opinion, and the interest of every sect, or peevish person; and if damnation be pronounced against Christians believing the Creed, and living good lives, because they are deceived or are said to be deceived in some opinions less necessary, there is no way in the world to satisfy unlearned persons in the choice of their religion, or to appease the unquietness of a scrupulous conscience."*—Dedication to Bishop Taylor's Liberty of Prophecying.

Mr. Fox, in page 154 of his History, has made some judicious observations upon the character of a party which he describes not only as powerful in the time of Charles and James, but as by no means inconsiderable during the reign of the two first princes of the House of Brunswick, when it was lowest. Doubtless, by a deplorable but not unaccountable fatality, many persons whose sincerity, as guardians of the Church, is more indisputable than their judgment, retained a strong affection to the Stuart family when in exile, and in the abundance of their aversion to Protestant Dissenters, and ecclesiastical latitudinarians, they became less vigilant against the greater dangers to which the restoration of that family, and the invincible but not dishonourable attachment of it to the church of Rome might have exposed the established religion of this country. Their political zeal may be imputed to the known difference of opinion between themselves and their opponents upon the obedience due to sovereigns, and it is somewhat remarkable that their speculative notions upon non-resistance gave a secret bias to their minds in favour of that very cause which must have owed its success practically to the

* Mr. Gibbon, suo more et modo, observes, "I am sorry to say that the three writers of the last age by whom the rights of toleration were so nobly defended, Bayle, Leibnitz, and Locke, are all laymen and philosophers."—Vol. v. cap. 54. In my turn I am glad to observe that, not long before the same time, the same rights were nearly with the same ability defended by Jeremy Taylor, an ecclesiastic, a scholar, and a man of genius, who "preserved the substance with the name of religion," and who exercised the "freedom" while he cherished the "temper" of true "philosophy."

most open resistance to the reigning monarch. Their religious zeal may in part be imputed to some recent controversies upon the Trinity, the Test, and other topics, which naturally and deservedly attract the notice of ecclesiastics. But the rebellions of 1715 and 1745 raised the greatest alarm about Popery, and the effects of that alarm were still more visible in the low church party, about whom Mr. Fox is silent, than in the high party, whom he has noticed. The former, consistently enough, were anxious to provide for the security both of our civil and religious rights. The latter, upon the arrival of mischief, would have been faithful to our religious rights, though for the preservation of our civil liberty they neither felt nor professed to feel much solicitude. But in the fear and the hatred of Popery the champions of civil liberty were, I say not more sincere, but more active and more conspicuous, and so it happened that, even when the spirit of the monarch then on the throne was favourable to the general cause of toleration, the low church party multiplied distinctions and exceptions to the prejudice of those fellow-subjects who adhered to the church of Rome. Bishop Hoadley considered The Measures of Submission to the Civil Magistrate, discussed the Original Institution of Civil Government, wrote many argumentative tracts in the Bangorian controversy, and therefore found it impossible to soften the resentment of his ecclesiastical brethren by a very elaborate Treatise on the Reasonableness of Conformity to the Church of England. But his fears and antipathies towards the Church of Rome are manifest in the masterly dedication which he addressed to Pope Clement XI. which was at first prefixed to Steele's Account of the State of the Roman Catholic Religion throughout the World, and has since been published in the second volume of the Bishop's works. Warburton, however offensive some of his writings may be from a spirit of dogmatism, certainly was not an intolerant bigot; but his enmity to the Church of Rome is visible, not only from his eloquent sermon upon the rise of Antichrist, but from many passages in his Alliance, where he agrees with Rousseau* that a polytheistic worship, which damns all out of its pale, and Popery, which brings in an imperium in imperio, are more hurtful than

* Page 226.

beneficial to the firm constitution of the State, and where speaking of four sects whose opinions ought to be restrained as pernicious to society, he assigns reasons for restraining the Atheist, the German Anabaptist, and the Quaker, and adds to his Catalogue the English Papist, who, owning a foreign ecclesiastical power superior to all temporal dominion, should not be tolerated in any sovereign state.* He plainly hints, that in his opinion few English Papists would disown the superiority of that foreign ecclesiastical power to all temporal dominion. Jortin was, I believe, descended from a family of French refugees, who came to England after the revocation of the Edict of Nantz. His mind had been early and deeply imbued with a just detestation of that spiritual tyranny which the Church of Rome had exercised so frequently and so fatally. He was the rational but undaunted advocate of religious freedom; yet, such was the force of habit, that he seems to have considered any improvement in the sentiments of Catholics as a moral impossibility, and any relaxation of the laws enacted against them in this country as a dangerous experiment. Archdeacon Blackburne felt a stronger alarm than any of his contemporaries about the encroachments of Popery. He pointed the terrible artillery of ridicule and argument against Papal doctrines and Papal discipline, and perhaps, under the influence of rooted prepossession, he inwardly suspected that opportunities might occur when the transition from the Church of England to the Church of Rome would not be difficult to a certain class of ecclesiastics, whose stiffness in orthodoxy, and whose predilection for the hierarchy, he was not accustomed to treat with much tenderness. If, however, any of these celebrated men had been now living, I hope that they would have perceived their error and retracted it, when they found that the Roman Catholics of England had begun to study and to acknowledge the best principles of religious freedom, that they were asking for a large and liberal toleration without the smallest possible chance of converting it to the purposes of establishment, and when, in the explicit, emphatic, and solemn forms which the legislature had prescribed, they before heaven and earth were prepared to renounce all obedience

* Page 304.

to such a spiritual power as directly or indirectly encroached upon the temporal dominion of an English king. If they had refused, or even hesitated, to assist in easing the shoulders of their Christian brethren from a most galling yoke, I should have said to them, "Ye know not what spirit ye are of"—ye are in effect calling, or at least teaching others to call, for "fire from Heaven" upon a numerous class of your fellow-creatures, who have lost the power, and who disclaim the inclination of lighting again those flames which persecution had so often kindled upon earth—ye know not "the signs of the times" in which a gracious Providence has ordained you to live—ye are contending only for party-liberty, which ye would stretch out one way only to narrow it in another—ye are not ashamed of using in substance the very same pretences for persecuting others that the enemies of your forefathers used for persecuting them.*

When I look back to the conduct of the Tories in the reign of James II. and even later times, their sagacity appears to me less unquestionable than their integrity. Mr. Hume, indeed, tells us that "the Tories have been so long obliged to talk in the republican style, that they seem to have made converts of themselves by their hypocrisy, and to have embraced the sentiments as well as language of their adversaries. There are, however," says he, "very considerable remains of that party in England, with all their old prejudices." † After the extinction of the Stewart line, they have nothing to fear from the willingness of a sovereign to change their religion; and having reason to indulge the expectation of becoming the favoured party, they in their own minds have no restraint from the excess of their political tenets. "They love liberty," says Mr. Hume, "but they love monarchy more." Their love of liberty, however, is too often confined to words, in which few men will venture to avow any hatred of it; while in their actions their love of monarchy is a more uniform and predominant motive. Their pride is not violated by wrongs, which fall with equal severity upon classes not so likely to be selected for those distinctions which are conferred by the Crown, and the same pride is exquisitely gratified by the prevalence of

* See Account of European Settlements, vol. ii. p. 232.
† Hume's Essay on the Parties of Great Britain.

those opinions which enable them to exercise a more uncontrolled sway in their own circle, and for their own ends. I believe, however, that many of them bow before the throne without any direct consciousness of bad intention. I should impute to them the want of foresight, rather than the want of virtue. I give them credit for sincerity in their attachment to Protestantism as well as monarchy. My only fear is, lest they should multiply the enemies of both, by the blind and stubborn neglect of every opportunity to conciliate them. To a body of men, in whose leading principles I do not concur, I shall not presume to offer any advice, because it might be equally unwelcome and unprofitable. But with their Protestant opponents I should expostulate more freely, because I cannot abandon the hope that expostulations addressed to them may have greater effect. Let me, then, at this momentous crisis, entreat them to remember, that if liberty of conscience had not been practically asserted, when in speculation it was understood imperfectly, the Church of England would never have existed—that, if the machinations afterwards meditated, and under the insidious pretence of toleration attempted against it, had not been foiled, that church would long ago have been subverted—that the minds of kings, as well as subjects, swarm with contradictions; and that the ruling passion, after a successful conflict with the inferior passions, draws over their strength to its own party—that Ferdinand and Isabella, who had favoured the Holy Brotherhood, and protected their subjects against an oppressive nobility, were led, by their love of power, aided as it was by their bigotry, and triumphing over their humanity, to establish and extend the dreadful tyranny of the Inquisition—that Charles the Fifth had not ceased to be a Papist, when, with impious mockery, he directed prayers to be offered up in Papal churches for the deliverance of the very Pope who by Charles's own orders, and for Charles's own purposes, had been thrown into confinement—that his religious prejudices co-operated with his political—that his favourite creed seemed to him a most powerful instrument for the ends of his more favourite ambition—that, before he had taken counsel, not from an abject flatterer, but a trusty monitor in his watch, he looked upon an uniform system of belief and worship as conducive to an uniform system of obedience—that Louis XIV. who

assisted and even bribed Charles II. to thrust back the Church of England from Protestantism to Popery, had in 1664 imposed most humiliating conditions upon Alexander the Seventh, when Crequi, the French ambassador, thought himself affronted by the guards of his infallible Holiness; and in 1687 sent the Marquis de Lavardin to Rome with an armed force to sustain the iniquitous claim of the franchises, and insult Innocent the Eleventh in his capital *—that for several centuries the power of the Pope has not been very formidable, unless assisted by the secular power of its adherents—that the probability of obtaining that assistance is now very slender—that, by standing armies and other resources, princes have found a surer support for their authority than their forefathers received from Papal bulls †—that, in order to make their own government more regular and more independent, Papal sovereigns have of late resisted openly the claims of the Pope—that, even in foreign countries, Catholic subjects have begun to distinguish with greater accuracy between spiritual and temporal power — that the general effects of theological tenets are experimentally known to be controlled by other and more general properties, which have their root in human nature itself—that, in the barter of commerce, ‡ and in the harmless pleasures of social intercourse, § Papists and Pro-

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* See Russell's Modern History, vol. iii. p. 344, and Gibbon's History, chap. 70.

† "Les Excommunications, les Interdits sont des Foudres, qui n'embrasent un Etat, que quand ils trouvent des matières combustibles. Il n'y en avoit point alors; mais peut-être Robert craignoit-il qu'il ne s'en formât."—Voltaire's Essay on the Spirit and Manners of Nations, vol. ii. cap. 39.

‡ "Are not very many of the Catholics intimately acquainted with their Protestant brethren, their partners in trade, their tenants, their landlords, their customers, their agents, their servants, their friends and companions in private life? Do we not mutually partake of the hospitality of each other, clergy with clergy, laymen with laymen, in numerous mixed companies of different religions and occupations."—Dr. Troy's Letter to Sir J. C. Hippisley, dated Dublin, June 12, 1805.

§ The passage which in our translation runs thus, "the Jews have no dealings with the Samaritans," means, I believe, that there was no convivial intercourse between them: "e contextu

testants can now live together without quarrelling about the true faith—that, in some parts of the Continent, Protestants and Catholics worship in the same sanctuary on the same day—that in Ireland, Papists fought under the banner of William the Third, while Protestants risqued their lives in the cause of his Catholic rival—that, in the war of 1745, Lutherans, Calvinists, and Church of England men united with German Catholics against the arms of France—that, at this very hour, the inhabitants of Spain and Portugal are, together with their Protestant allies, shedding their blood for the defence of a common and most glorious cause—that, however it may once have "been thought essential to the Roman Catholic religion to inspire a violent hatred to every other worship," * milder and juster sen-

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evangelistæ certum est, non licuisse Judæis eodem cibo et potu, quo Samaritani, uti: idque phrasi *μὴ συγχρᾶσθαι* significare. Neque enim novum est, voces ad victum pertinentes *ἐλλειπτικῶς* subintelligi." Confer *ἑτοιμάζειν*, Luke ix. 52. xxii. 12. Mark xiv. 15. and *παρασκευάζειν*, Acts x. "Ad hunc itaque modum et Samaritis dixerit, *οὐ συγχρῶνται*, h. e. non una utuntur cibo et potu. Scio hoc ita vulgo accipi, ac si omne commercium cum Samaritis interdictum Judæis fuerit. Sed vereor ut hoc ostendi possit."—Vide Bossii, Dissertat. ad 2 Tim. ii. 22. in the second part of Thesaurus Theolog. Philolog. p. 700. "Malim tenere explicationem Grotii et aliorum, juxta quos verto: non enim amice utuntur Judæi Samaritanis: Ita ut nullam Judæis inter Samaritanos intercessisse familiaritatem asseratur. Ita simplex *χρῆσθαι* haud raro occurrit."—Isocrates, adv. Callim. p. 550. "*τῶν δὲ χρώμενων τινὲς τούτῳ*, nonnulli vero, qui illo familiariter utebantur."—Joseph. Antiq. lib. xviii. c. 8. p. 630. "*σφόδρα γὰρ ἀλλήλαις ἐχρῶντο, αἱ δὲ γυναῖκες* magna has inter mulieres familiaritas intercesserat."—Plutarchus, in Arato, p. 1048. "*ἄνθρωπον οὐ πόνηρον, ἀλλὰ καὶ κεχρημένον ἐκείνῳ*, hominem non malum, imo et ipsi familiarem."—Vide Kypke, Observationes Sacræ ad Johan, c. iv. v. 9.) In the Latin language, the sense of *uti* is similar to that of *χρῆσθαι* in the foregoing passages:

"Si sciret regibus uti,
Utere Pompeio Grospho."

And more fully in the following:

"Me Capitolinus convictore usus amicoque
A puero est." HORAT.

* Hume on the Standard of Taste.

timents are now avowed alike by their laity and their clergy—that, even "in dividing the sacerdotal from the regal office,* and bestowing it on a foreigner, who has always a separate interest to that of the public,"† they bestow it upon one who, in the present condition of Europe, can rarely have an opposite

* "Upon this subject there is a difference of opinion between Mr. Hume and Mr. Gibbon. "Though a Christian philosopher," says Mr. Gibbon, "and a patriot, will be equally scandalized by the temporal kingdom of the clergy, yet Mr. Hume seems to have been hasty in concluding that if the civil and ecclesiastical powers be restored in the same person, it is of little moment whether he be styled prince or prelate, since the temporal character will predominate."—See Hume's History, i. 389. and Gibbon's History, vi. 70. The history of past ages is, I think, in favour of Mr. Hume's opinion. But there is little occasion for Protestants to enter into the controversy, because there is little or no danger that the Pope will again acquire any large share of that temporal power,‡ which for several centuries has been on the wane, and is now scarcely visible. The inconveniences which Mr. Gibbon found in the sacerdotal power of the Pope are, the frequency of election, and that education in a convent which is most adverse to reason, humanity, and freedom, and the primitive stain of which will adhere to the mind and manners of a Pope.—Chap. 70. I see many other inconveniences, which, however, it is unnecessary for me in this place to enumerate. But I must grant at least a qualified assent to the following statement of Mr. Gibbon: "The ecclesiastical government may be praised in its present state, as a mild, decent, and tranquil system, exempt from the dangers of a minority, the sallies of youth, the expenses of luxury, and the calamities of war." — Chap. 70. We in our own days have seen that the Pope suppressed the Order of the Jesuits, with the concurrence, and indeed at the instigation, of Roman Catholic sovereigns. But if a Pope had been inclined to abolish the Inquisition in Spain or Portugal, it may be doubted whether such an attempt would not have been opposed, not only from the prejudices of the people, and from superstition and the love of spiritual dominion in the priesthood, but from secular views of policy and ambition in their most Catholic and Faithful Majesties: *Regum timendorum in proprios greges* by whom the *imperium Jovis* was recognized, or resisted, as it suited their convenience.

† See Hume on the Protestant Succession.

‡ See APPENDIX, No. I.

political interest, and that they have accompanied the grant by express limitation * to every kind and every degree of pretension which directly or indirectly encroaches on the temporal rights of any sovereign—that the real and visible interest of the Pope himself is to propitiate rather than to incense Protestant subjects and Protestant kings; and that having lost every prospect of establishing his own religion in Great Britain, he must in his own proper agency implore even the toleration of it as a favour, rather than demand it as a right—that the Catholics, who, even when Mr. Hume wrote,† were less hostile to the Whigs, from experience of their tolerating spirit, have, upon longer reflection, and perhaps after the discipline of longer and sharper personal sufferings, been more fully won over to the sounder parts of their political system—that the danger from any religious party is to be measured by the relative situation in which it stands to other parties, at any given period—that, if present appearances may be trusted, the Church of England has far less to fear from Catholics than from the members of a sect eminently wise in their generation, daily increasing in numbers and activity, and implacably hostile to the cause of Catholicism—that nothing perhaps "but zeal can overset an established religion; and that an over-active zeal in friends is apt to beget a like spirit in antagonists" ‡—that there scarcely "ever occurs in any deliberation a choice which is either purely good or purely ill" §—that, by the course of public affairs, we, in all probability, must, ere long, be compelled to choose between measures which must irritate, and measures which may conciliate—that if, upon a balance of all circumstances, it should appear more safe to conciliate than to irritate, the principles avowed by English Whigs point at once to lenient expedients; and that in tolerating and even

* See an Abstract of the Answers of the six foreign Roman Catholic Universities of the Questions proposed to them in the year 1788, and the Letter from Dr. Troy, titular Archbishop of Dublin, and Dr. Maylar, titular Bishop of Cork, and other important papers, in the Appendix to Sir Charles Hippisley's very useful book, printed in London for Faulder, but, I believe, not published.

† See Essay on Superstition.

‡ Hume's Essay on the Coalition of Parties.

§ Hume on the Protestant Succession.

favouring the claims of the Catholics, moderate Whigs, whether laymen or ecclesiastics, will be quite as praiseworthy for good sense and liberality, as their predecessors were for discernment in suspecting, and firmness in resisting, the Catholic supporters of the Stuart family.

The ardour and the curiosity of men upon the controverted subjects of religion have visibly cooled. But experience should teach us, that if we suffer the principles of religious freedom to be undermined by those pretexts which politicians are seldom unable, and zealots seldom unwilling to employ, we shall make room for speculative and practical encroachments upon that political freedom which we have long enjoyed, and by which the dignity and security of the Crown are blended with the rights and happiness of the people.

The foregoing remarks I would recommend with peculiar earnestness, but with all becoming deference to the consideration of those ecclesiastics who can love and esteem Tories, while they differ from them, and who aspire to the praise of consistency in the application of their own tenets to the business of life. It is by good actions, the fruit of good principles, they must hope to give effect to their own good intentions, and to soften that dislike which in former ages was excited against their order by the cruelty of persecutors, the haughtiness of hierarchs, the narrowness of polemics, and the servility of venal and temporising flatterers. Indifferent they may be to the bluster of Bolingbroke, the jeers of Gibbon, and the buffooneries of Voltaire. Ignorant, however, they cannot be of the formidable accusations which have been set in array against them by an assailant who united in his own character all the advantages of a profound thinker, an elegant writer, and a most amiable man. To themselves indeed, as to the teachers in every other church, he spoke the language of good sense and good morality, when he said, "Where the difference of principles is attended with no contrariety of action, but each may follow his own way, without interfering with his neighbour, as happens in all religious controversies; what madness, what fury, can beget such unhappy, such fatal divisions?"* But to their forefathers, as I shall ever con-

* Hume's Essay on Parties in general.

tend, he did great injustice, when sacrificing historical accuracy to philosophical acuteness, he said, that "the resemblance in their superstitions long united the high church Tories and the Roman Catholics in support of prerogative and kingly power."* I enter not, for the present, into any controversy with persons who class the differences between the Church of England and the church of Rome among those "unintelligible disputes which are not worthy the reflection of a man of sense." But, if upon doctrine and discipline, the dissent of our forefathers from the Romish church had not been sincere, and, in their judgment, wide, they would with little reluctance have surendered their own religious establishment to the prejudices of James II. and they would have been impelled to make the surrender by that very fondness for mystical dogmas, and that very eagerness for spiritual domination, which have been so frequently, and, in many points, so unjustly imputed to them. My anxious desire is, that my own contemporaries would endeavour to refute the charges alledged against them, by performing other duties, which seem to me to be required by the exigences of other times. If they will consider the history of past ages, "as written for their own learning"—if they will not resist the "tendency of science to be changed into conscience," and to make that which is reasonable to become "a law"†—if they will look abroad to the actual state of society—if they will attend to the changes which have taken place in the directions and results both of speculation and practice—if they will calculate the effects of that impatience which men, who give themselves credit for being improved, feel and express against every obstacle to farther improvements, whether real or supposed—if they have been instructed that "all laws divine and human are desirous of sweet and merciful interpretations, and that of themselves they love to yield to necessity and to charity"‡— if, by a becoming mixture of vigilance and forbearance they are careful "not to let their good be evil spoken of" deservedly—if, in singleness of heart, they will them-

* Hume's Essay on Superstition.
† Taylor's Ductor, book ii. chap. 1.
‡ Taylor's Ductor, book i. chap. 6.

selves hold fast to that," which by themselves has been embraced as true—"if, in a spirit of faith unfeigned, they will learn to love the brethren, whether they be of Paul, or of Apollos, or of Cephas—then will they "walk worthy of the vocation wherewith they are called," and triumph over the accusations of their bitterest and most powerful adversaries. They will shew "that they can bear contradiction with patience"—that they have subdued that "pride" which is said "to support their vindictive disposition"—that, "acting as a society, they are" not "for ever actuated by ambition, pride, revenge and a persecuting spirit"—that, as individuals, they not only have a considerable share in the learning of the times," but in all the various advantages "of an extended and progressive civilization"—that "their taste and eloquence are" not "always better than their skill in reasoning and philosophy;" and that, for the "noble virtues of humanity, meekness, and moderation," which "very many of them" are by Mr. Hume himself allowed to "possess," they "are beholden" not more "to nature or reflection," than to the precepts of their religion, the constitution of their church, and "the genius of their calling."*

Mr. Gibbon tells us† that "the modern times of religious indifference,"—I should say moderation,—"are most favourable to the peace and security of the clergy, who under the reign of superstition had much to hope from the ignorance, and much to fear from the violence of mankind." Among other reasons for which I would, in one instance, alter the language before I adopt the observations of Mr. Gibbon, I ought to state, that the very indifference of which he spoke, and perhaps approved, would be eventually injurious to the interests, to the honour, to the personal morals, and the official usefulness of a Christian priesthood. It would relax their diligence, not only in theological inquiries, but in those critical, historical, and philosophical researches which are necessary preparations to their profession, which are inseparably connected with their labours in defending and explaining the truths of religion, natural and revealed, and

* See Hume's Essay on National Characters, Note 1.
† Chap. 69.

which have the additional, though collateral advantage of qualifying them to partake in every kind of progressive knowledge; upon every subject of literature and science. Having received the first impulse to study from the desire of accumulating that various information which they are to employ as clergymen, they become scholars, philosophers, and good writers, as well as good theologians. But their ardour in pursuits which, as connected with profane learning, deserve the praise of every impartial unbeliever, would be chilled, many of their attainments would be useless, much of their genius would lie dormant, if a general indifference to religion really prevailed. On the other hand, though they inculcate moderation and practise it, they will find sufficient incitements to their industry, and sufficient employment for their understandings among a civilized people to whom, indeed, they are peculiarly responsible for the neglect or the use of the means which are afforded them for intellectual improvement. They will "hope" for little, "from the ignorance of mankind," if they endeavour to enlighten it—they have little "to fear from the violence of mankind," if they do their duty in assuaging it, by precept and example.

In recommending our religious tenets to those who differ from us, a good and wise man will at first act in conformity to the spirit of a caution, which Quintilian recommends in the education of youth, "ne studia qui amare nondum possunt, oderint." He will take care lest his own passions obstruct the operations of his own understanding—he will be content to enlighten gradually, before he expects to convince impartially—he will be studious not to provoke, if he honestly wishes to persuade—he will show by his own example the happy influence of his own tenets—and, though he should fail in enlarging the number of converts, he will have the conscious merit of attempting to assuage the animosities of foes. The history, whether of Catholics or Protestants, does not encourage me to repose any large confidence in the precision with which men in power have been accustomed to calculate the energies of moral causes, or the authority of moral obligations. But upon subjects intimately connected with virtue and religion, persons in private stations would do well not to trifle with their own responsibility in a life to come, and if certain questions now afloat were to be decided

by an appeal, not to the wavering temper of human policy, but to the pure and uniform spirit of Christianity itself, "good will to men" would be recommended as the most powerful instrument for restoring and perpetuating "peace upon earth."

"I perceive," says Dr. Paley, "no reason why men of different religious persuasions may not sit upon the same bench, deliberate in the same council, or fight in the same ranks, as well as men of various or opposite opinions upon any controverted topic of natural history, philosophy, or ethics."* This principle has, in fact, been already recognised by the legislature in their relaxation of many severe statutes which once were in force against the Catholics. Such however is the unalterable constitution of the human mind, that in certain circumstances the experience of indulgence excites men to a more anxious investigation into rights, that the removal of fear is succeeded by the perturbations of hope, and that while pretensions, reasonable in the estimation of those who urge them, are resisted, previous concessions are generally imputed to some disingenuous motives. Protestants may be found, as well as Catholics, who thus state the dilemma. If the Catholics ought to be trusted, more ought to be granted to them—if the Catholics ought not to be trusted, too much has been granted to them already. To retreat is inglorious, to halt long is impossible, and to advance, in the judgment of some men, might be indiscreet. Without entering directly into the controversy, I shall content myself with observing that one of the arguments employed against the Catholics is directly opposite to the known practice of our legislature in the most important regulations of policy and religion, and is utterly incompatible with the adaptation of any government to those changes which causes innumerable and irresistible are producing in the sentiments and interests of mankind. "In earthly affairs," says Mr. Gibbon, "it is not easy to conceive how an assembly of legislators can bind their successors, invested with powers equal to their own."† We are all aware of the practical difficulty, and they who from their high

* On Religious Establishments, p. 582.
† Vol. vi. p. 409.

stations are authorised, and indeed bound to decide upon it, should reflect very seriously upon those changes, which are silently taking place in the general character of our country, should have "a quick and accurate feeling of the tendencies of this varying character, should endeavour to trace the causes and the modes of the variation itself, should attend to the aggregate of population at any given period, and to the numbers of particular classes, and should direct their attention to every thing which affects the character of individuals—manners, education, prevailing occupations, religion, taste, and above all, the distribution of wealth, and the state of prejudice and opinions."* If these various and important objects were regarded with the impartiality which they deserve, the counsels of ministers, and the regulations of Parliament would be favourable to the commonweal.

In the extremes of religious credulity, and its opposite, there is a secret and restless distrust, which makes men look out for support from the zeal and the number of converts. But when the favourite opinion is supposed to prevail, the perturbations of fear are succeeded by the triumphs of pride, and pride imperceptibly generates a propensity towards jealous or scornful intolerance. There is also an intermediate, and, I think a happier state of mind when, firmly standing within the pale of our own community, we abstain from all annoyance of those who are without it; gladly give admission to every one who from conviction wishes to be admitted; and indulge affectionately, but not ostentatiously, the pleasing hope that they who come over to us will be delivered from some debasing error, or gradually brought nearer to some useful truth. Upon this principle I, like other men, should feel great satisfaction in any accession of number to the religious community in which I myself was educated, and the interests of which will ever be dear to me. But I am convinced, from long observation, that unity in religious opinions is unattainable—that the attempt to produce it by artifice or force recoils upon its employers—that every truth, really interesting to mankind, is discovered more fully and more clearly by the investigation of inquirers, whose ability and perhaps mo-

* See the masterly critique in the Edinburgh Review upon Mr. Fox's History.

tives to inquire are various—that the spirit of proselytism, even in honest men, is often accompanied by excess of zeal, impatience of contradiction, and a secret propensity towards intolerance—that public measures ought to be guided by views of the public good, at once precise and large—and that the public good itself is most effectually promoted and secured by a temper of general moderation among the different members and different classes of society. "If Popery," says Dr. Paley, "and Protestantism were permitted to dwell quietly together, Papists might not become Protestants, (for the name is commonly the last thing that is changed,) but they would become more enlightened and informed: they would by little and little incorporate into their creed many of the tenets of Protestantism, as well as imbibe a portion of its spirit and moderation." * "Would we let the name †

* See, as before, Paley, p. 580.

† I am much less anxious to multiply converts from the Church of Rome, than to mitigate the prejudices of those who conscientiously remain in it. All the great ends of morality and of public peace would be answered by the gradual approach to Protestant notions, or at least to that spirit which is the glory of genuine and consistent Protestantism. But the attempt to make proselytes might stir up unprofitable and even pernicious controversies.

In the fifth volume of Mosheim's Ecclesiastical History, we have an account of a projected union between the Gallican Church and the Church of England; and I am sure that great commendation is due to Dr. Maclain, not only for his explanation of the spirit by which our own establishment is actuated, but for his defence of the learned and temperate Archbishop Wake, against the errors and censures of Dr. Mosheim.

In the fourth volume of Grotius's works there is an excellent treatise called Georgii Cassandri de Articulis Religionis inter Catholicos et Protestantes Controversis ad invidissimos Imperatores Augustos Ferdinandum I. et Maximilianum II. Ejus Successorem Consultatio. I have read it with great delight; I received great instruction from the Annotata which Grotius wrote upon it; and from a subsequent work, called Rivetiani Apologetici pro Schismate contra votum Pacis facti Discussio.

The failure of Wake's plan and of Ferdinand's for a kind of συγχρητισμὸς in religion, would, I think, discourage prudent men from endeavouring to accomplish a direct and formal union between the Church of Rome and the Church of England. The opinion of Grotius made a deep impression not only upon Laud,

stand," Dr. Paley adds in a note, "we might often attract men, without their perceiving it, much nearer to ourselves, than if they did perceive it, they would be willing to come."

Sheldon, and Hammond, whom Warburton has censured with great sharpness, but upon the very learned Archbishop Bramhall, and such were the apprehensions of the Protestant Dissenters in England, that Mr. Baxter published a book which he called a Treatise of the Grotian Religion. Bramhall replied to it with vigour, acuteness, and erudition, worthy of a champion who had grappled most skilfully and most bravely with the puissant Hobbes. "I acknowledge," says he, "the very title of Mr. Baxter's book did not please me. Different opinions do not make different Religions. It is the Golden Rule of Justice, not to do that to another which a man would not have done to himself. He would take it unkindly to have his own religion contradistinguished into the Prelatical religion, and the Presbyterian religion, and the Independent religion, and the Anabaptistical religion: and then to have his Presbyterian religion subdivided, either according to the number of the Churches, into the English religion, and the Scottish religion, and the Gallican religion, and the Belgian religion, and the Helvetian religion, and the Allobrogian religion; or of all the names of the Reformers, into the Calvinistical religion, and the Brownistical religion, Zuinglian religion, and Erastian religion, &c. For all these have their differences. And so himself in his preface to this very treatise, admits those things for pious truths, for which we have been branded with the names of Papists and Arminians. The Church of Christ is but one, one fold and one Shepherd, Christian religion is but one, one Lord, one faith, one hope. Then why doth he multiply religions, and cut the Christian faith into threds, as if every opinion were a fundamental article of religion?"—See Bramhall's Works, p. 607.

Such sentiments would do honour to the most enlightened prelate in an age far more enlightened than that in which Bramhall lived. Happy were it for the Christian world, if the same principles were avowed in the same spirit by men who are safe from persecution, as Bramhall was not—who enjoy advantages which Bramhall did not—who have a smoother access than Bramhall had to the knowledge of religious truths—and who in the better circumstances of their times may find stronger encouragements than Bramhall found to moderation and charity.

Bishop Taylor has twice adverted to the subject of union with the Church of Rome, and I think that intelligent and serious Protestants will be much interested by the statements and observations of that excellent prelate. "There is great reason for princes to give toleration to disagreeing persons, whose opinions

The remark which Dr. Paley has made upon the importance of names is worthy of his sagacity, and happily for this country

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by fair means cannot be altered; for if the persons be confident, they will serve God according to their persuasions; and if they be publicly prohibited they will privately convene, and then all those inconveniences and mischiefs which are arguments against the permission of conventicles, are arguments for the public permissions of differing religions, because the denying of the public worship will certainly produce private conventicles, against which all wise princes and commonwealths have upon great reasons made edicts and severe sanctions."—Epist. dedicat. to Discourse on Liberty of Prophesying. "King James, of blessed memory, in his Letters to the States of the United Provinces, dated 6 March 1613, thus wrote: 'Magis autem e re fore si sopiantur, authoritate publica, ita ut prohibeatis ministros vestros ne eas disputationes in suggestum aut ad plebem ferant, ac districte imperetis ut pacem colant, se invicem tolerando in ista opinionum ac sententiarum discrepantia, * * * * * * eoque justius videmur vobis hoc ipsum suadere debere, quod neutram comperimus adeo deviam ut non possint et cum fidei Christianæ veritate, et cum animarum salute consistere,' &c. The like counsel in the divisions of Germany, at the first reformation, was thought reasonable by the Emperor Ferdinand, and his excellent son Maximilian; for they had observed that violence did exasperate, was unblessed, unsuccessful and unreasonable, and therefore they made decrees of toleration and appointed tempers and expedients to be drawn up by discreet persons, and George Cassander was designed to this great work, and did something towards it; and Emanuel Philibert, Duke of Savoy, repenting of his war undertaken for religion against the Pedemontans, promised them toleration, and was as good as his word; as much is done by the nobility of Polonia. So that the best princes and the best bishops gave toleration and impunities; but it is known that the first persecutions of disagreeing persons were by the Arians, by the Circumcellians and Donatists, and from them they of the Church took examples, who in small numbers did sometime persuade it, sometime practise it!"—Ibid.

"Let us consider what ways men have propounded to find out truth, and upon the foundation of that to establish peace in Christendom: 1. That there is but one true way is agreed upon; and therefore almost every Church of one denomination that lives under government propounds to you a system, or collective body of articles, and tells you, that's the true religion, and they are the Church, and the peculiar people of God: like Brutus and Cassius, of whom one says, ubicunque ipsi essent, prætexebant esse rem-

the persons who now adhere to the Bishop of Rome have anticipated the wishes of many reflecting Protestants, who remember

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publicam: they supposed themselves were the commonwealth, and these are the church.

"2. Others cast about to cure this, and conclude that it must be done by submission to an infallible guide; this must do it or nothing; and this is the way of the Church of Rome.

"3. Some very wise men finding this to fail, have undertaken to reconcile the differences of Christendom by a way of moderation. Thus they have projected to reconcile the Papists and Lutherans, the Lutherans and Calvinists, the Remonstrants and Contra-Remonstrants, and project that each side should abate of their asperities, and pare away something of their propositions, and join in common terms and phrases of accommodation, each of them sparing something, and promising they shall have a great deal of peace for the exchange of a little of their opinion. This was the way of Cassander, Modrevius, Andreas Frisius, Erasmus, Spalato, Grotius, and indeed of Charles the Fifth in part, but something more heartily of Ferdinand the Second. This device produced the conferences at Poissy, Montpelier, at Ratisbon, at the Hague, at many places more: and what was the event of these? Their parties when their delegates returned, either disclaimed their moderation, or their respective princes had some other ends to serve, or they permitted the meetings upon uncertain hopes, and a trial, if any good might come; or it may be they were both in the wrong, and their mutual abatement was nothing but a mutual quitting of what they could not get, and the shaking hands of false friends; or it may be it was all of it nothing but hypocrisy and arts of craftiness, and, like Lucian's man, every man would be a man and a pestle when he pleased."—Taylor's Via Intelligentiæ, Sermon, preached before the University of Dublin. The whole discourse is a master-piece of eloquence. But I shall content myself with adding the following passage from Taylor's address to the reader:

"I have often thought of those excellent words of Mr. Hooker, in his very learned discourse of Justification. Such is the untoward constitution of our nature, that we do neither so perfectly understand the way and knowledge of the Lord, nor so stedfastly embrace it when it is understood; nor so graciously utter it when it is embraced, nor so peaceably maintain it when it is uttered, but that the best of us are overtaken, sometime through blindness, sometime through hastiness, sometime through impatience, sometime through other passions of the mind, (whereunto, God knows, we are too subject,) that I find by true experience, the best way of learning and peace is that which cures all

that Papist, as a term of reproach, was originally employed by Martin Luther. Our English contemporaries disclaim the ap-

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these evils, as far as in the world they are curable; and that is the ways of holiness, which are therefore the best and only way of truth. In disputations there is no end, and but very little advantage: but the way of godliness hath in it no error, and no doubtfulness."—Prefatory Address to the Via Intelligentiæ.

In plain truth I prefer, with Dr. Paley, a gradual and mutual approach of opinion among individuals improving themselves in general knowledge, and not irritating each other by controversy to any formal and express declaration in one church upon its approach to another church in disputed points of doctrine. Men who are endowed with good sense and enlightened by education may differ less and less from one another, while the ignorant and prejudiced would take an alarm at the smallest authorised concessions to those who differ from them in matters of faith. I believe that the general experience of mankind will induce men of observation to acknowledge that the answer of Barleam, a Legate from the Greek Church, to Benedict XII. was very judicious: "Thirty or forty of our doctors may agree with those of the Vatican in their love of truth and unity of belief, but what would be the use or the recompense of such agreement? The scorn of their brethren and the reproaches of a blind and obstinate nation."—Gibbon's History, chap. 66.

While freedom of inquiry continues, and while it is aided by the growth of the soundest principles in criticism, ethics, and the more useful parts of metaphysics, changes upon speculative points will gradually be wrought in the minds of reflecting individuals, and if those changes be accompanied by a spirit of mutual respect and mutual charity, the influence of that spirit will silently diffuse itself among all the members of all religious societies. A direct and avowed intercommunity of doctrine and discipline will become less necessary, and if a favourable opportunity should arise for attempting such intercommunity, even partially, the attempt itself will be less difficult. The freedom of private persons in communicating their opinions, if used with discretion, must contribute to the discovery or the elucidation of important truths, and though the governors of Protestant churches may see good reasons for caution in making any large and public changes in the forms of ecclesiastical establishments, yet the members and even teachers of those establishments, by communicating to the world the results of their laborious and impartial researches will have little to fear from the sarcastic observation of Bossuet: "Il est bien permis de changer dans la nouvelle reforme, mais il n'est pas permis d'avouer qu'on change."—Var. v. i. p. 405.

pellation of Papist, and by disclaiming it they mean to give a pledge for their sincerity in denying that their spiritual head has any authority whatsoever in the temporal concerns of the English government. I should myself have wished to see the word Papist applied only to those persons who formerly acknowledged that imperium in imperio, which every regular and independent government would be disposed to resist; and, as to the change of appellation which has taken place among ourselves, we may presume that our countrymen were directed to their choice by that prudence which induces men to shake off an odious and alarming name, and by that pride which makes them impatient of carrying about themselves even the sign of subjection to a kind of power which they no longer recognize.

In opposition to the opinions and the wishes which I have just now expressed, some well-meaning, and I add, well-informed persons may contend for a doctrine which is supported by high authority, and which I, therefore, shall proceed to examine, so far as the belief of it may tend to perpetuate and inflame the differences which exist between Protestants and Roman Catholics.

That the "Pope is Antichrist," Warburton represents "as the great Protestant principle;"* and in a most eloquent ser-

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* "The great Protestant principle," as it is called by Warburton, was honoured by a strenuous advocate in James the First, who, as Mr. Zouch tells us, (Life of Sanderson, page 42,) "was so well pleased with Dr. Robert Abbot's book de Antichristo, that he ordered his own Commentary upon part of the Apocalypse to be printed with it, when the second edition appeared, in 1608." The work of Abbot contains all the historical and critical learning which belongs to the subject; the latinity is clear and vigorous, and the arguments employed in it refute, I think, the attempts of Bellarmine to prove "Nomen Antichristi literale et mysticum proprium esse non appellativum; Antichristi sedem in Ecclesia Hierosolymis esse debere, ante Christi tempus tribus annis et dimidio definiri posse, &c. After comparing the work of the Oxford professor with the Commentary of James, I very much doubt the justness of the panegyric, which Launcelot Andrews, in his preface to the Opera Regia, has bestowed upon a royal polemic, whom his tutor Petrus Junius of Seaton had called Θεοδίδακτον. James, even before he attained the age of twenty, had manifested his hostility to Popery by his Paraphrasis Apocalyp-

mon he states the causes which brought that principle into temporary disrepute. "The moderation," says he, "of Grotius and

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seos, to which his Pia Meditatio on the twentieth chapter is subjoined in the collection of his works.

Favourable as was the reception, which the writings of James are known to have met from the ecclesiastics of his day, I much doubt whether his consistency and sincerity bore any proportion to his zeal. In Scotland he, with his hands lifted up to heaven, blessed God, "that he had honoured him to be a king over the sincerest kirk in the world—ridiculed the church of Geneva for keeping Pascha and Sale, and represented the service of the neighbouring Church of England as an evil missa and wanting nothing of the miss but the liftings, &c."—See note on Rapin.

But when he sat on the throne of England, he is said by Rapin to "have thought all religion good, provided it taught obedience to Sovereigns, and preserved the hierarchy, which" the youthful panegyrist of an anti-espiscopalian church afterwards considered as "a fundamental article."

In the Epistola Dedicatoria, Robert Abbot thus addresses him: "Te vero unum illud adhortamur, et flexis genibus obsecramus, ut quod cœpisti facere magis magisque facias, ut Ecclesiæ Romanæ pestes et contagia depellas, idque operam des quod a regibus terræ se Deus expectare denunciat, postquam Babylonicæ meretricis jugum excusserint. Odio habebunt illam et desolatam facient, et nudam, et carnes ejus comedent, et ipsam igne concremabunt. In quam rem qui te hactenus intelligimus cura omni et cogitatione tam vehementis incubuisse, dubitare non possumus quin futurum sit, ut primis postrema respondeant et iisdem perpetuo vestigiis, ad Christi honorem advigiles, et exterminium Antichristi."

What the professor thus earnestly requires from the king, the king, after he began to be suspected, with equal earnestness professed for himself when, in answer to the petition of Parliament, he said, "that what religion he was of his books did declare, when he wished it to be written in marble and remain to posterity a mark upon him, if he should swerve from his religion; for he who doth dissemble with God, is not to be trusted with men, and when he protested before God that his heart had bled, when he had heard of the increase of Popery." Yet he joined with his courtiers in branding George Abbot, Archbishop of Canterbury, and brother of the Professor, with the name of Puritan, because this honest prelate "in discharge of his conscience towards God, and duty to his majesty, had told him, that he was labouring to set up the most damnable and heretical doctrine of the Church of Rome and the Whore of Babylon, and that it would

Episcopius, and a visionary scheme of Laud,* who had been bred up in college with an aversion to the Puritans, indisposed

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be hateful to God, and grievous to his good subjects, the confessors of the Gospel, that his majesty, who had so often disputed against those heresies, should now show himself the patron of those doctrines which his own pen told the world, and his conscience told himself, were superstitious."

While he encourged reproaches and taunts against a Protestant Archbishop, he assured the Catholic Archbishop of Ambreun, that "he perceived him to be a man sent from God, to whom he might truly open his mind, and that he always had a good opinion of the Church of Rome." He became so reconciled to Antichrist, that in order to accomplish his own favourite purpose of marrying his son to a great royal family, he affected to treat all the disputed points between the Church of Rome and the Church of England as "mere scholastick questions"—assumed the most specious language of toleration as a disguise to his ambition—endeavoured to conciliate the court of Spain, by binding himself and his successors to treat his Roman Catholic subjects with all possible lenity—made the most favourable terms for the Infanta to exercise her own religion in England—granted her the right of educating all her children in that religion till they were ten years old—afterwards in his negociation with the court of France pledged himself in detail for Madame to retain the worship prescribed by the Church of Rome, and extended the privilege of educating her offspring according to that worship from their tenth to their thirteenth year.

Such was the firmness, and such the sincerity of the royal enemy to Antichrist, and the fatal effects of his contracts were visible in the errors, crimes and sufferings of his descendants. They who reflect upon the hypocrisy of James the First and Charles the Second, and upon the bigotry and inconsistency of James the Second, may be inclined to think that sovereigns would do well to meditate upon a plain and wholesome maxim, far more adapted to their duty and their honour than all the lofty generalities, which beguiled the credulity and pampered the pride of James, upon the prerogative of kings: "The bread of deceit is sweet to man, but afterwards his mouth shall be filled with gravel."

* "Archbishop Laud is certainly exempt from any suspicion of being inclined to Popery; but he entertained a chimerical notion of the practicability of an union between the Churches of England and of Rome; and he weakly hoped that this great object might be accomplished by mutual and equal concessions."—Symmons's Life of Milton, p. 173. I shall have occasion more

both from pressing Popery with the victorious doctrine of Antichrist. Sheldon, a court divine, and afterwards an Archbishop, denied publickly, in an act, at Oxford, that the Pope was Antichrist. Hammond, who was of the same fashionable party, though much more able and discreet, ventured, in pure aversion to fanaticism, to adopt the system of Grotius on this head; a system to which Popery has been so much indebted; and which he seems to have invented, for the sake only of his darling project—an union between the Romish and Protestant churches.

"The civil wars followed, with the overthrow of the constitution, by a rabble of armed fanatics, whose second project was to destroy Antichrist, and erect the fifth monarchy of King Jesus. After the restoration, divines of the greatest merit were led, by the severity of their sufferings and their aversion to the fanatic spirit which occasioned them, to discountenance a doctrine which had so much contributed to aggravate the preceding mischiefs.

"Amidst the licentious practices, and the popish projects of the court of Charles II. whatever concerned the sublimities of religion, and the mysterious ways of Providence; whatever disgraced the Church of Rome, and stigmatised her with the brand of Antichrist, was sure to be treated with contempt and aversion.

"Though the revolution removed many of these prejudices, and by the vindication of religious as well as civil liberty, abated the rancour of sects and parties against one another; though from the recent terror and abhorrence of Popery, it produced

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than once to express my opinion upon the difficulty, and indeed the inutility of a direct union between the Church of Rome and the Church of England. But in justice to the memory of Archbishop Laud I am bound to declare, that the fury of religious zeal has seldom produced a more unfounded and malignant calumny than that which accused our prelate of favouring the Church of Rome at the expense of the honour, or the interests, or the safety of the Church of England. Be his errors and be his faults what they may, he was a sincere and strenuous advocate for our ecclesiastical establishment. Perhaps he fell a martyr to it.

"Around his tomb let Art and Genius weep."

JOHNSON.

contrary prejudices favourable to the cause of truth, so that one might have hoped this capital prophecy might at length have procured a fair and equitable hearing; yet, alas! the remedy came too late; the distemper was grown inveterate, and Antichrist and Babylon were still held to be the language of cant and enthusiasm; so that no eminence of genius, no depth of science, could secure the writers on this prophecy from contempt."*

I believe myself to have some little share in those "contrary prejudices," which the Bishop allows to be "favourable to the cause of truth;" and to be free from many of those terrors and resentments which induced some of our forefathers to "discountenance the doctrine" vindicated by Warburton. I am conscious of never having treated with contempt and aversion any point which concerned "the sublimities of religion and the mysterious ways of Providence." Though I have many fears of "fanatics" not yet "armed," who may again attempt "to destroy Antichrist," I should have little reliance on the protection which their tenets or their antipathies would afford to the church or to the state against the encroachments of Popery. I have had the advantage of reading some learned works which, under the auspices of Bishop Warburton, have procured "a fair and equitable hearing," to what he denominates "a capital prophecy." I do not call "Antichrist and Babylon the language of cant and enthusiasm," in some of my enlightened contemporaries. I see "depth of science" in Joseph Mede; "eminence of genius" in Bishop Warburton; acuteness of reasoning and elegance of diction in Bishop Hurd; a spirit of diligent inquiry in Bishop Newton and Bishop Halifax. But I long have been, and I expect long to continue, a sincere and firm advocate for Protestantism, though I entertain many serious doubts upon the evidence which has been employed to establish the favourite doctrine of Warburton and his adherents about Antichrist.

Fearing that the inconveniences of a direct union with the church of Rome would more than balance the conveniencies, I should be sorry to see that union attempted. Suspecting, however, that the subject of Antichrist has been nearly exhausted by

* See Sermon XI. on the rise of Antichrist, vol. iii.

the learned theologians whom I have already enumerated; observing that some of the ecclesiastics who lately preached the Warburtonian lectures have gradually retreated to other topics than those which Warburton was peculiarly solicitous to bring into a train of equitable discussion; attentive, also, to the religious and civil concerns of Europe at the present hour, I am not sure that any signal advantage can arise to Protestantism from a continuance of the controversy. If it be really the wish of English Protestants to make their Roman Catholic brethren good subjects, it seems to me that a more improper method cannot be adopted than to tell them again and again—to tell them from the pulpit and the press—to tell them in a temper not very mild, and in terms not very courteous, that the spiritual head of their church is described in the sacred writings as "the man of sin, the son of perdition, Antichrist, denying the Father and the Son." If, indeed, I were convinced not only that the doctrine itself is scriptural, but that my countrymen are in danger of relapsing into Popery, I might think myself bound to inculcate that doctrine argumentatively and temperately, as at once seasonable and true. I do not, therefore, censure the zeal of other men who, for the foregoing reasons, insist upon it; and other men have no right to be offended with me because, after perusing the same books, I have not embraced the same opinions, or because I am fearful of the consequences to which the active dissemination of those opinions may lead; not so much from their want of conformity to obscure texts or a controverted book in the New Testament, as from their want of adaptation to what I think the present condition of society. Again, if I were to admit that Warburton is right in speculation, but were satisfied at the same time that my country is in no immediate danger of falling back into Popery, I should be inclined to preserve upon the doctrine of Antichrist the same silence which my ecclesiastical brethren are now content to preserve upon Transubstantiation and Purgatory, which continue, I suppose, to be taught among Roman Catholics, but are no longer disputed in the private families of Protestants. By zealous proselyte-makers they have rarely been introduced for these twenty or thirty years even in Polemical writings, and, if mentioned at all in the conversation of Churchmen or Dissenters,

are ranked, as they were at the Reformation, among the most erroneous tenets of Catholicism. Perhaps, I should see peculiar reasons for holding my peace upon this topic, and leaving it with events to strengthen and illustrate the arguments which have been already adduced. Antichrist, we are told, has not yet fallen; but he is doomed to fall; and the circumstances which are related in the Apocalypse, if I followed the common interpretation of them, might dispose me to believe that his fall is not very distant. Is it not my duty then to assist in fulfilling a prophecy which I suppose myself to understand? Perhaps it is. But certainly I am not required, nor even authorized, to concur in fulfilling it by such means as are inconsistent with other duties, which are at all times obligatory upon Christians; and among which I must be permitted to rank the exercise of candour and charity. I must not forget that the prophecy is allowed to relate to the mysterious ways of Providence. I must not forget that in scanning those ways I am a fallible being, that other men, equally fallible, but equally well-intentioned, do not see them in the same point of view, and that even though my faith be right, my practice may be wrong. If I were deliberately to undertake the office of executing, so far as in me lieth, what I suppose to be predicted, possible it is that I should be hurried into some of those extravagancies and crimes which enthusiasm engenders, and which, however efficacious they may be in destroying the kingdom of Antichrist, may eventually disturb the security of earthly kingdoms lawfully established. Probable, too, it is, that suffering my zeal to outstep my knowledge, I should now and then violate those principles of "civil and religious liberty," which, as Warburton tells us, "were vindicated at the Revolution;" and inflame "that rancour of sects and parties against one another, which was then abated."

When we rest the general defence of Protestantism upon a principle, on the soundness of which learned Protestants differ widely among themselves—when we not only interpret the past but anticipate the future, and thus assign to contingency nearly the strength of certainty—when that interpretation refers the ordinary effects of ordinary causes to the extraordinary dispensations which prophecy involves—a discreet believer would hardly deny the possibility of error, though his application of what is

written in the Apocalypse to the Church of Rome appears to him well-founded. He may think that theologians have already said enough to awaken the attention of Christians, and to prepare them for setting a great value upon the great proof which great events in the moral world are now furnishing for the credibility of revelation. But if it should ultimately appear that those events, however they may shake earthly dominions, yet leave the kingdom of Antichrist in possession of power, lessened, indeed, but still pernicious, he may hereafter have occasion to repent of his confidence, and to confess that the polemics whom he followed have said too much, that they have injured the cause which they meant to defend, that they have increased the animosities of Christians against one another, and brought not only Protestantism but revelation itself into additional disrepute with persons who previously were not favourable to the doctrines of either.

I do not wish to disturb the faith of any man who holds the same opinion with Warburton about Antichrist. But I should be sorry to see him maintain it in a spirit of dogmatism, and yet more sorry to observe that, by the secret operation of it upon his mind, he is induced to attack the tenets of the Church of Rome with increased severity, and to treat Roman Catholics either as Christians or as members of civilized society with diminished respect or diminished kindness.

In the alarming state of public affairs both at home and abroad, persuasion seems to me the only expedient to which a good man attached to Protestantism would now have recourse, and should he happen to be wise as well as good, he will not fail to recollect that the success of his attempt to persuade will very much depend upon a right choice of time and topic. In truth, if the events now passing before us really are accomplishments of a prophecy; if the ways of Providence, as connected with that prophecy, are gradually becoming less and less mysterious; if the Roman Catholic, who has an equal interest with the Protestant, in examining that prophecy, and contemplating those ways, still retains his conviction that the Pope is not Antichrist, a Protestant may find other employments quite as laudable, quite as useful, and quite as safe, as men usually find in the resuscitation of controversies which have been suspended without any

visible mischief to the peace of communities, or the morality of individuals. He may adore, in humble silence, the mysterious ways of God. He may discern additional reasons, not only for his faith in Christianity, but for his adherence to Protestantism. He may lament what he conceives to be the blindness and obstinacy of those Catholics whom such clear and numerous proofs do not convince. But if, assuming the end proposed by the Deity, he takes upon himself to determine what are the means most efficacious to accomplish it; if, in the indications of a prophecy, rapidly and, as he would say, notoriously advancing towards a completion, he sees a warrant for strong measures of annoyance to justify a strong opinion; if he should hold that considerations of political expediency, and all the growing habits of civilized men in the social virtues of moderation and mutual forbearance are to yield to the authority of his religious belief; if he ventures to do what in the general course of worldly affairs would be evil, in order that good, according to his own particular persuasion upon a particular case, may come the more speedily; surely he, as a moral agent, must incur a responsibility which, to every dispassionate and reflecting observer, would appear most awful.

In the mean time, whether a Protestant of this kind be right or wrong, the well-known tendencies of education, habit, indignation, pride, fear, and even mistaken piety, leave little or no room for us to doubt what influence such opinions, accompanied by such measures, will probably have upon the mind of a sincere Roman Catholic. His sufferings will stir up his passions, and his passions will impede the operations of his understanding. He is more likely to be confirmed in his error than to be reclaimed from it when the destroyers of Antichrist have added, what he thinks intolerance and insult to what they call the orthodox interpretation of a prophecy, externally and recently supported by the unequivocal evidence of facts. He may feelingly acknowledge that the prophecy of "sending not peace, but a sword," has already been fulfilled in a sufficient degree to justify the foresight and veracity of the Being who uttered it, and to furnish very humiliating proofs that a most holy name has been more than once prostituted by Christian zealots for purposes most unchristian. Without attempting to vindicate the persecuting spirit of

his forefathers, he may suspect that some of his Christian brethren are rather dim in discerning, or rather slow in endeavouring to accomplish another prediction, which is equally clear and important, and which encourages Christians of all churches and all sects to indulge the pleasing hope that the ultimate and most blessed effect of their religion will be, "Peace upon earth and good-will towards men."

I wish the cause of Protestantism to be ever victorious over the erroneous doctrines of the Romish church. But let it not be the "victory of force atchieved by the weapons" of persecution—let us not permit what is clear in ethics to be darkened by what is doubtful in politics—instead of multiplying decisions or conjectures on the "mysterious" counsels of the Deity, let us contemplate and obey his explicit and direct commands.

I know not, my friend, whether the critical and theological subjects upon which I have thrown out my thoughts, will appear to you or to other men digressions. All I have to say in my own vindication is, that the contents of Mr. Fox's History, and the remarks made upon it, excited those thoughts in my mind, and that, believing them not unlikely to interest you, I have submitted them, as I shall in the sequel submit some other reflections, suggested by the same causes, to your serious consideration.

I hold, with Mr. Burke, that it was "not a fundamental part of the settlement at the Revolution for the state to be Protestant without any qualification of the term—for a religion to be established which was nothing but a mere negation of some other—for a scheme to be professed by ourselves and imposed upon others, without any positive idea of doctrine, discipline, worship, or morals."* I maintain that in the doctrine, discipline, and worship of the Established Church no alteration should ever be attempted without the utmost caution—none without the general approbation of its members—none without the consent and even co-operation of its teachers—none without the grave deliberation of Parliament and the formal assent of the Sovereign. But I also hold that "toleration, being a part of moral and political prudence, ought to be tender and large—that a tolerant government ought not to be too scrupulous in it investigations, but may bear without blame very ill-grounded doctrines—that

* Letter to Sir H. Langrishe.

the disfranchised part of a people cannot think themselves in a happy state, to be utterly excluded from all its direct and all its consequential advantages—that the popular part of the constitution must be to them by far the most odious part of it—and that if they who compose the privileged body have not an interest, they must but too frequently have motives of pride, passion, petulance, peevish jealousy, or tyrannic suspicion, to urge them to treat the excluded people with contempt and rigour."*

Mr. Fox cannot be supposed to have bestowed much attention upon the writings of theologians, and perhaps he little suspected that men who agreed with him upon political subjects held notions very different from his own upon the extent of toleration. But it has fallen in my way to know, and it is my duty as a lover of truth to state, that to praise for vigilance and jealousy against the church of Rome, our low-church fathers were equally entitled with the high-church party, and that the blame of continuing that vigilance and that jealousy, when they are not equally necessary, ought to fall with equal weight upon the successors of both. The old Puritans were perhaps more indignant against the Papists than any class of churchmen. But the more enlightened, and, I wish it were in my power to add, the most numerous class of Dissenters, † in our own days, have formed more

* Letter to Sir H. Langrishe, p. 312.

† I have often had occasion to observe that statesmen can contrive to gratify the revenge or the vanity of religious parties, without affording, or meaning to afford to them substantial relief; that what Dissenters suffer does not always add to the security of the church; and that what the church loses is not always an acquisition to the cause of religious liberty. My opinion is confirmed by some striking occurrences in the reign of Charles and James the Second, and abundant are the materials which they supply for reflection to vigilant and impartial observers, both within and without the pale of our ecclesiastic establishment.

"From the insurrection of the fifth monarchy men, Clarendon and the ministry took occasion to infer the dangerous spirit of the Presbyterians and of all the sectaries: but the madness of the attempt sufficiently proved that it had been undertaken by no concert, and never could have proved dangerous. The well-known hatred, too, which prevailed between the Presbyterians and the other sects, should have removed the former from all sus-

exact and more consistent opinions upon the principles of toleration. As a most unfeigned and most anxious well-wisher to

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picion of any concurrence in the enterprise. But as a pretence was wanted, besides their old demerits, for justifying the intended rigours against all of them, this reason, however slight, was very greedily laid hold of.

The Catholics dreaded an entire union among the Protestants. Were they the sole Nonconformists in the nation, the severe execution of penal laws upon their sect seemed an infallible consequence; and they used therefore all their interest to push matters to extremity against the Presbyterians, who had formerly been their most severe oppressors, and whom they now expected for their companions in affliction.

"The church party had, during so many years, suffered such injuries and indignities from the sectaries of every denomination, that no moderation, much less deference, was upon this occasion to be expected in the ecclesiastics. Instead of enlarging their terms of communion, in order to comprehend the Presbyterians, they gladly laid hold of the prejudices which prevailed among that sect in order to eject them from their livings.

"A combination had been entered into by the most zealous of the Presbyterian ecclesiastics to refuse the subscription required by the Bill of Uniformity, in hopes that the bishops would not dare at once to expel so great a number of the most popular preachers. The Catholic party at Court, who desired a great rent among the Protestants, encouraged them in this obstinacy, and gave them hopes that the king would protect them in their refusal. The king himself, by his irresolute conduct, contributed either from design or accident, to increase this opinion."—"About two thousand of the clergy, in one day, relinquished their cures; and to the great astonishment of the court, sacrificed their interest to their religious tenets. The church enjoyed the pleasure of retaliation; and even pushed, as usual, the vengeance further than the offence."—Hume's England, chap. i. Reign of Charles II. 4th edit. 1762.

From this statement it appears that the Catholics, who were favoured by the King, concurred with Churchmen in depressing the Presbyterians, and at the same time encouraged the Presbyterians in resisting the terms proposed by the Church. It will now be seen that, in order to undermine the Church, the same king adopted measures which in appearance were favourable to the Dissenters. "Under the pretence," says Hume, of easing the Protestant Dissenters, Charles and the Duke of York agreed upon a plan for introducing a general toleration, and giving the Catholics the free exercise of their religion; at least, the exercise

our ecclesiastical establishment, I should rejoice at the prevalence of the same principles among men whose erudition, virtue,

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of it in private houses. The two brothers saw with pleasure so numerous and popular a body of the clergy refuse conformity; and it was hoped that, under shelter of their name, the small and hated sect of the Catholics might meet with favour and protection."

Let us go on to the next disastrous reign:

"James was become a great patron of toleration, and an enemy to all those persecuting laws which from the influence of the Church had been enacted both against the Dissenters and Catholics. Not contented with granting dispensations to particular persons, he assumed a power of issuing a declaration of general indulgence, and of suspending at once all the penal statutes by which a conformity was required to the established religion.

"In order to produce a better reception for his edict of toleration, the king, finding himself opposed by the Church, began to pay court to the Dissenters; and he imagined by playing one party against another, he should easily obtain the victory over both; a refined policy which it much exceeded his capacity to conduct. His intentions were so obvious, that it was impossible for him ever to gain the sincere confidence and regard of the Nonconformists." Mr. Hume, with his usual sagacity, assigns reasons "for which all the King's favours must have appeared to every man of judgment among the sectaries insidious"—"yet such was the pleasure reaped from present ease, and such the animosity of the Dissenters against the Church, who had so long subjected them to the rigours of persecution, that they every where expressed the most entire duty to the King and compliance with his measures; and could not forbear rejoicing extremely in the present depression of their adversaries."—Ch. i. James II.

Such were the ill-founded and short-lived triumphs of Churchmen against Dissenters, of Dissenters against Churchmen, and of Catholics, as it appears from the sequel of our history, against both. But what is the lesson of sound policy, which well-informed and well-intentioned men should learn from these events? It is purely to cherish a spirit of mutual forbearance and good-will, to abstain from acts of severity against others, lest from the dark and shifting views of state-craft they should recoil upon ourselves—to unite in protecting the rights of religious freedom from the insidious favour and the rude hostility of worldly-minded men, who convert our virtues and weaknesses, our love and hatred, our hopes and fears, into instruments of wicked purposes, which are rarely detected till it is too late to oppose them.

and piety I must ever reverence. I deprecate the day in which the intolerance of churchmen should furnish our adversaries with the opportunity for objecting to us, "What so pure as some of the morals included in some theological systems? What so contrary to the spirit of Christianity, and to the well-being of society, as some of the practices to which the injudicious or intemperate defence of those systems gives rise?"*

"To fear where no fear is" has been represented to us as a mark of that weakness which by the constitution of the moral world stigmatizes and ultimately defeats the aims of wickedness. But will a good man hastily impute deliberate perjury to a class of men, who in the ordinary concerns of life have never manifested the slightest disrespect to the sanctity of an oath? Will he suppose that among the descendants of families, most respectable for their antiquity and their opulence, even the sense

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Under the harsh sentiments which a numerous body of modern sectaries are wont to avow against modern Catholics, there may be lurking "an opinion," as Mr. Hume, in his Essay on the Parties of Great Britain, calls it, "not only of affection, but interest," not only a fondness for their own peculiar tenets, but a jealousy of the sway which teachers acquire over their followers, from the propagation of such abstruse and mysterious dogmas as soothe the mind with a consciousness of merit in the prompt, indiscriminate, and entire submission of reason to faith. In our own days I should think it a perilous experiment for any minister to play off the prejudices and passions of those sectaries against Roman Catholics, and the sectaries, who are by themselves denominated "rational dissenters." At the same time I should think those Catholics and those Dissenters very short-sighted, if, for the sake of some immediate and temporary gratification, they should rejoice in the success of any measure which is directly or indirectly injurious to the safety or even the respectability of our own ecclesiastical establishment. If all parties were disposed to take large and just views of their interests in society, and their duties from religion, they would find that in forbearing to do injury to others they most effectually provided for their own honour and their own security—they would not promote the bad, but unknown designs of other men, and they would aim at no advantages for themselves which an enlightened and virtuous member of the community would be inclined to oppose.

* See Hume's Natural History of Religion.

of honour is utterly extinguished? Will he to-day impose a strong pledge for their loyalty, and to-morrow declare that they who gave it are incapable of making any long resistance to the illusions of casuistry, or the instigations of bigotry, and that without hesitation or remorse they will be guilty of ingratitude and perfidy to their protectors, rebellion to their governors, and mockery of their God? * When required to look back upon their peaceable and inoffensive behaviour for more than forty years, will he endeavour to bring down odium upon them by the revival of refuted assumptions, or antiquated and exploded tales? When entreated to contemplate the galling effects of long-continued and much-abused restraints, will he maintain that the power of self-respect to appreciate insult, or self-preservation to discern injury, belongs exclusively, or even pre-eminently, to his Protestant brethren? Will he, "from generation to generation," persist in "visiting the sins of the fathers upon the children," who hate us only because they are conscious of being themselves hated for offences not their own? Will he not rather wish to "show mercy unto thousands," who, if they were encouraged to "love" the law, would find it their interest as well as their duty to "keep its commandments?" As a citizen, as a man, and as a Christian, will he not be disposed to "comfort them again now after the time that he" and his progenitors have "plagued them, and for the years wherein they have suffered" the most humiliating and the most mortifying adversity?"

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* The spirit in which some men talk of the distrust which Protestants ought to cherish against the insincerity of Roman Catholics in taking oaths, reminds me of what passed in the trials of Grove and Pickering. "Scrogges, the Chief Justice, instead of being counsel for the prisoners, as his office required, pleaded the cause against them, brow-beat their witnesses, and on every occasion represented their guilt as certain and uncontroverted! He even went so far as to affirm, that the Papists have not the same principles which Protestants have, and therefore were not entitled to the common credence which the principles and practices of the latter call for. When the jury brought in their verdict against the prisoners, he said, You have done, gentlemen, like very good subjects, and very good Christians, that is to say, like very good Protestants."—Cap. v. of the reign of Charles II. Hume's History, 1762.

The principle upon which alone any legal restraints imposed upon the Roman Catholics can be justified, has been stated by no writer with more precision and more perspicuity than by Dr. Paley. "If the members of the Romish church," says he, "for the most part adhere to the interests, or maintain the right of a foreign pretender to the crown of these kingdoms; and if there be no way of distinguishing those who do from those who do not entertain such dangerous prejudices; government is well warranted in fencing out the whole sect from situations of trust and power. But even in this example it is not to popery that the laws object, but to popery as the mark of Jacobitism, which is the sole cause of suspicion, and the sole justification of those severe and jealous laws which have been enacted against the professors of that religion, and which, as it was accidental in its origin, so probably it will be temporary in its duration; and these restrictions ought not to continue one day longer than some visible danger renders them necessary to the preservation of public tranquillity."* What the visible danger now is, or in what quarter any invisible danger may be lurking, are points upon which no satisfaction has yet been given to my mind by the moans of Mr. Abraham Plimley, the prattle of Mr. Chancellor Perceval, the rant of Mr. Privy Counsellor Duigenan, or the yell of No Popery. Jacobitism has ceased, and the Pope remains. But his power is considerably diminished, the political prejudices of his adherents are no longer supported by the hopes, or inflamed by the resentments which Jacobitism once inspired, their military connection with foreign potentates is nearly dissolved, the most respectable part of them are neither unable nor unwilling to derive some advantage from the general diffusion of knowledge, and it were an outrage upon all probability to maintain that their advice, authority, and example, should not have some degree of salutary influence upon the lower classes of persons, who, from their participation of the same common sufferings in the same common cause, are in a peculiar manner attached to their superiors and dependent upon them. If external circumstances give us no reason to apprehend danger from the Roman

* Paley on Religious Establishments, p. 584.

Catholics, are we likely to find it in the internal structure of the human mind? I think not. We rarely do good to our fellow-creatures without experiencing a subsequent feeling of kindness to those whom we have endeavoured to please. As rarely do we receive good without mingled sentiments of respect and gratitude, when the obligation is conferred upon us, not by individuals with whom pride may induce us to compare ourselves, but by governments and communities, to the dignity of which our own importance bears no proportion, and to the strength of which we can look up for protection without any consciousness of personal abasement. Mutual forbearance, if the experiment were made, would gradually lead to mutual confidence, and they who persist in rejecting our faith may by our practice be persuaded to imitate our charity. "Do the Roman Catholics," says a very sensible writer, "hope to conciliate those whom they style their Protestant brethren, by telling them that they are not Christians?" No, most assuredly, for it were a false and foul accusation. But do the Protestants in their turn hope to conciliate the Catholics by telling them that, because their fathers were persecutors, they are themselves inclined to persecute, and therefore ought to be scantily and jealously tolerated—that neither experience nor reflection has softened that bigotry which formerly was an object of just and general terror—and that the church of Rome, even in its decline, will by its secret emissaries employ the same machinations, and aim at the perpetration of the same outrages by which it disturbed the repose of the Christian world, when it was in the zenith of its power?

Much as I respect the abilities of Dr. Milner* and of the late Mr. Archdeacon Sturges, I shall ever lament the controversy in which they were engaged, because I know the effects which it has produced among some weak men in the church of Rome,

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* I must observe that Dr. Milner was not the aggressor, and that he sustained the defensive part with great acuteness and great spirit. But upon the revival of what controversialists have written about the indignities and wrongs which our Protestant and Roman Catholic forefathers inflicted on each other, I hold generally, and at this time I hold more especially, Δὶς κράμβη θάνατος.

and some very wise men in the Church of England. Upon the same principles of prudence and moderation I most pointedly condemn the rashness and uncharitableness of those persons who lately sent forth Ward's Controversy of Ordination, which was first printed in London in 1719, and republished in Dublin in December 1807. An answer to Ward's fallacious reasonings and invidious statements has been written by the Rev. Thomas Elrington, D. D.* late Senior Fellow of Trinity College, Dublin. It was put into my hands by a prelate,† whose solid judgment and unsullied integrity will ever entitle him to my esteem and confidence. In addition to the praise which is due to Dr. El-

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* After writing this sentence I had the satisfaction to meet with Dr. Elrington's judicious Reflections on the appointment of Dr. Milner as the political Agent of the Roman Catholic Clergy in Ireland, printed at Dublin, in 1809.

As a well-wisher to the Petition of the Roman Catholics, I should be sorry to see a great political measure obstructed by scholastic distinctions, by invidious references to the reigns of Mary and Elizabeth, or by harsh, and I think most unmerited reflections upon the character of William the Third. Let the professions of allegiance which the Roman Catholics make be clear, distinct, unequivocal, conceived in the spirit, and expressed in nearly the words of the celebrated Remonstrance signed by the English Roman Catholics, in 1640, and transmitted afterwards by Walsh to the Irish Catholics. After serious and temperate discussion among themselves, and with their parliamentary friends, "upon the appointment of Bishops to fill the vacant Sees in Ireland," let them, without cavilling and without tergiversation, consent to such interposition of the temporal power as the circumstances of the times have rendered necessary—such, as without ensnaring their sincerity, or impeding their real usefulness in spiritual concerns, may calm the fears and soften the jealousies of their Protestant fellow-subjects—such, as upon the plainest and soundest principles of mutual good-will and fair dealing, may "enable their Governors to be satisfied of the loyalty of the person to be appointed, and" therefore "is just, and ought to be agreed to."—See Elrington's Reflections, p. 35 to 48.

Heaven forbid that a very great and a very good cause should be cramped by the subtleties of casuists, or defeated by the prejudices, the resentments, and the ill-timed, though perhaps well-meant zeal of a few individuals.

† Dr. Nathaniel Alexander, Bishop of Downe.

rington as a faithful narrator and a judicious reasoner, I ought to state that the part which he took in the controversy was defensive, that he meant to reply to a book, the contents of which must at this season have been most inflammatory to the minds of Catholic zealots in Ireland, and that by replying to it with so much ability and so much discretion he has discharged an important duty to that establishment in which he is a most meritorious teacher.

Having pursued a train of reflections which one part of Mr. Fox's History suggested to me, I shall now return to the British Critic.

Among the aphorisms selected by the Reviewer from Mr. Fox's History this is the third: "The Lawfulness of the Assassination of Tyrants, meant to be honoured by the Greeks with the name of Tyrannicide, rests partly on the fact that cases may exist in which the office of the sword of justice may be undertaken by another." "If they have existed," Mr. Fox, says, "they have been in instances where trial has been wholly out of the question, as in that of Cæsar and other tyrants." "In page 10 he half meets," says the Reviewer, "the point of assassinations of this description being justifiable, but with an evident bias to the affirmative. An opinion of his probably formed, or at least first avowed, after his visit at Paris, in the last peace, and his very honourable and distinguished reception at the Thuilleries."

As the Reviewer has described that "combination of circumstances which called upon him for particular care in the account he was to give of Mr. Fox's History:" as he has farther professed to "feel that it was no common cause or person to which his literary duty at that instant called him to sit in judgment:" as he has farther still declared that, "in his strictures on Mr. Fox as a writer, the character of Mr. Fox the statesman had not been mentally adverted to;" I must ascribe the passage just now quoted to that "flutter and hurry of spirits, which," as Mr. Hume says, in his essay on the Standard of Taste, "attend the first perusal of a piece, and which confound not only the genuine sentiment of beauty," but, as I would add, the import of propositions, and the principles of opinion. The Reviewer certainly meant to impress on the minds of his readers that Mr. Fox was generally an

advocate for regicide, "honoured * by the Greeks with the name of Tyrannicide"—that he transferred to modern times his approbation of what happened to "Cæsar and other tyrants" real or supposed in times of antiquity—that he insinuated, by his bias to the affirmative, something more and something worse than he dared to affirm—that he might possibly have formed, though he did not avow his opinion before his late visit to Paris—that, by the contagion of French example, and the blandishments of French adulation, he had been induced to avow it, on his return from the French capital—and that, in opposition to his own repeated declarations in Parliament, he probably was not displeased with the destruction of Louis XVI. under the gullotine. Less than this scarcely any reader can understand from the words of the Reviewer, and more than this is not necessary to bring down upon Mr. Fox the detestation of every enlightened statesman, every honest man, and every civilized people in Europe.

Instead of compressing Mr. Fox's opinion into the form of an aphorism, I shall endeavour to collect what it really was from the whole of the passage to which the Reviewer has adverted. "Strafford," says he, "was a great delinquent, and well deserved the severest punishment. But nothing short of a clearly proved case can justify or even excuse a departure from the sacred rules of criminal justice; for indeed it can rarely happen that the mischief to be expected from suffering any criminal, however guilty, to escape, can be equal to that resulting from the violation of the substantial rules of criminal proceedings; to which the innocent owe the security of all that is dear to them." Thus far Mr. Fox seems to me to have said nothing to which any zealous loyalist, or any virtuous man can object. Whether the criminal be a subject or a king; whether he be more or less guilty; Mr. Fox's

* The irony of the Reviewer, however amusing to Partizans, will not be quite satisfactory to scholars. They who understand the manners, or the governments, or the language of Greece, must be aware that for Regicide, as distinguished from Tyrannicide, there is no Greek word to be found or even expected. The distinction is entirely modern, and every modern Regicide, whether justly or unjustly, considers, or at least professes himself a Tyrannicide. I know not that any modern language has definitely assigned an honourable sense to the word.

proposition is so large as to show that the mischief to be expected from his escape is less than the mischief of punishing him by "a departure from the sacred rules of criminal justice," when recourse can be had to those rules. Now, for the conviction of subjects, laws are generally provided; though in some cases, as where bills of attainder have been passed in England, the offenders have been punished by an ex post facto law; and in Rome the associates of Cataline were put to death without the authority of an express law; and the necessity of the measure was the only plea that could be urged to justify or even excuse the severity of it. In regard to sovereigns, no state, in point of fact, has ever consigned, or, I hope, ever will consign, supreme power to any person upon conditions to the violation of which is explicitly affixed any penalty of exile* or death. Hence, in bringing a sovereign to trial, the most formidable difficulties arise. The proof of his guilt must be established by the letter of

* I should have added dethronement, if the privilege of union among the Arragonese had not entitled them, under certain circumstances, to withdraw their allegiance from the reigning Sovereign, and to elect a successor. Dr. Robertson, who says that he had not found, in any author whom he had an opportunity of consulting, the constitutional form of the oath of allegiance," yet acknowledges "the spirit of it to have been agreeable to the spirit of the Arragonese constitution;" and thinks it "probable that the many authors who had produced the ancient Spanish words in which it was expressed, had taken it from some writer of credit, whose work had not fallen into his (i. e. Robertson's) hands."

"In the ninth century, when the provinces of Navarre and Arragon, which Charlemagne had conquered, had formed themselves into the kingdom of Navarre, and chosen for their king Inigo, Count of Bigorre, "a sort of Magna Charta was, at his election, drawn up for securing the liberty of the people from all tyrannical extensions of the King's prerogative. The people of Navarre afterwards negligently lost the benefit of this, but the Arragonese being wiser, would never give it up, and to this day enjoy many privileges founded on that original compact, which was called from the place where it was agreed upon, the Fore of Sobrabe."—See vol. i. of Puffendorf's introduction to the History of the principal States of Europe; page 39 of Sayer's translation.

If we descend to later times we shall find the language of Moreton, in his embassy to Queen Elizabeth, yet more emphatical: "Gens Scotorum, cum ab initio libera esset, reges se jure

regulations, angrily and recently introduced in consequence of crimes that were previous to them; or by circuitous and precarious deductions from the general laws of self-preservation, or the general principles of government as instituted for the protection of subjects. The mind, upon such occasions, is left without any guidance from written and definite rules. It finds only doubtful and imperfect analogies in precedent, and if the passions of resentment or fear did not impel men to decision, their reason would seldom permit them to decide rigorously against an accused and captive king.* All this Mr. Fox un-

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sibi creavit, ut imperium populi suffragiis mandatum, si res posceret, eisdem suffragiis adimere posset. Hujus quoque juris expressam habent imaginem, quæ, in regno ineundo usurpantur ceremoniæ * * * * * idem vero apertissime potest intelligi, ex inoffenso veteris juris tenore, ex quo apud Scotos regnari cœptum est, ad nostram usque memoriam servato, cum nemo, interea, hoc jus non modo abrogare, sed nec convellere, aut ulla in parte imminere tentarit: cum tot reges, quos enumerare longum esset, majores nostri regno exuerint, exilio damnarint, carceribus coercuerint, supplicio denique affecerint: nec unquam tamen de legis ascerbitate minuenda mentio facta est." (Buchanan. Rev. Scotic. lib. xx. p. 398.) We read the foregoing words in the twentieth book of a History written by Buchanan, whom Selden calls "that hater of monarchs who had a malicious dislike of giving titles and attributes of great honour to Princes."—See Selden upon Titles of Honour, chap. vi. p. 1.

We must observe that, according to Moreton's own account, the conditions imposed, even in barbarous ages, on the Scottish kings, do not appear to have been expressed in any regular formulary; and as to the symbolical import of ceremonies which Moreton has not explained, I can form no opinion upon it.

* In endeavouring to show that "kings are under the laws, as well as their subjects, and that regal guilt from its greater consequences ought to be corrected with severer infliction," Milton quotes the opinions of Luther, Zuinglius, Calvin, Bucer, Peter Martyr, Paræus, Gilby, and Christopher Goodman: see Milton's "Tenure of Kings and Magistrates." "Those authorities," says Milton's biographer, "unquestionably demonstrate that the responsibility of kings to a human tribunal is a doctrine which has not been uniformly considered as incompatible with Christian theology: but their support cannot be extended to the full assertion in the title of this piece, "that it is lawful for any who

derstood quite as well as the Reviewer or myself, before he met with what is called "an honourable and distinguished

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have the power to call to account a tyrant;" &c. though this assertion be a little qualified by the subsequent words, "and after due conviction to depose and put him to death." (Symmons's Life of Milton, p. 252, 3.) In order to establish the lawfulness of putting a wicked king to death, Milton requires not only due conviction, but "that the ordinary magistrate should have neglected or denied to do it." Many enlightened patriots would disagree with Milton upon the circumstances which would have led him to call the conviction of a tyrant *due*. But it is proper for us to remember that Milton's opinions upon the lawfulness of trying a wicked king are very distinct from the tenets of those persons, if such there be, who would maintain the right of destroying him by assassination. The above-mentioned work of Milton was intended for an answer to the objections of the Presbyterians—the very men, who, in common with the Royalists, condemned the execution of Charles, and the progenitors of the very men, who in our own days have been reproached for a crime which those progenitors did not commit, and accused of retaining that principle of tyrannicide which they neither have inherited, nor, so far as my observation extends, are disposed to adopt.

In the reigns of George the First and Second, some orthodox tories wished those monarchs whom they considered as usurpers, to be dethroned, even at the hazard of seeing their dethronement followed by their death. The presbyterian whigs showed themselves loyal subjects through the course of two rebellions which broke out in those reigns, and they seemed to be satisfied with that form of monarchical government, which was settled at the revolution. Upon the general doctrine of passive obedience they never appeared to differ materially from Mr. Hume, who, in his remarks on the debates of Parliament in 1675, has discussed the question in terms so precise, and upon grounds so equitable, that no sophistry can deface his statement—no legal, or theological, or metaphysical distinctions can impair it—no legitimate reasoning can overthrow it—no ingenuity can improve it by addition or correction. From a change, not perhaps for the better, in their peculiar situation as sectaries—from the novel and important discussions to which our disputes with America gave rise, and from a favourite and fashionable custom of viewing political subjects through the medium of metaphysical abstraction, some of them may, at a later period, have been inclined towards speculative republicanism. But in no book I ever read, and in no

reception at the Thuilleries;" and though to the popular and even Parliamentary statements of some conversations which were

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conversation I ever heard, have they attempted to lay down rules for the deposition or personal destruction of wicked kings. Practically they have not been proved to be guilty of treason, and even of sedition they have not been convicted, except in two or three instances, where writings were interpreted without any striking marks of candour, and sentences pronounced without any unusual relaxation of severity. If their general opinions, then, be not in their direct and obvious tendency, dangerous to a free and mixed government, why are they to be treated with far less kindness than they formerly experienced from a dynasty, which their forefathers assisted in raising to the English throne, and supported against the armed and unarmed partisans of the Stuart line? If they be dangerous to such a government, but in their remoter and more doubtful tendencies only, does the history of mankind give us reason to believe that they will be weaned from their errors by the frowns of titled and pensioned courtiers, the taunts of mercenary witlings, the anathemas of frantic mystics, or the vulgar and venomous execrations of a deluded and inflamed rabble? Men, however, there are, to whom it does not seem incompatible with prudence or equity, to hunt down a body of their fellow-subjects, who are making no inconsiderable progress in general knowledge, who have begun to share with their countrymen in the praise, not only of scientific research, but of polite literature, and who, from their extensive dealings in commerce, must be useful members of a community the political interests of which are now interwoven closely with the causes of its commercial prosperity.

If for sentiments so unfashionable and so unpopular, a moderate churchman were compelled to look for shelter in the authority of high example, he might find it surely in the good humour, good sense, and good spirit of Bishop Morley. "When that prelate was consulted by the mayor of a country corporation what method he should take to root out the fanatics in the year of his mayoralty, the Bishop, now grown old, first preached friendliness to him by ordering him a glass of Canary as oft as he started the question in company: and next admonished him, when alone, to let those people live quietly, in many of whom he was satified there was the true fear of God, and who were not likely to be gained by rigour and severity."—Kennet's Register, p. 816, quoted by the learned Mr. Zouch in the life of Isaac Walton, p. 43.

Thus did an ecclesiastic, venerable from station, and wise from -ience, repress the insolence of office and the harshness of

said to have passed there, it is in my power to give the most direct contradiction, I must own that, not having heard of any

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intolerance; and let us not forget, that Bishop Morley spoke of Dissenters, who in their love of literary attainments and their discharge of social duties, were far inferior to the sectaries to whom I advert.

Among the advantages of a steady, but mild and upright government, it is always intelligible, as well as acceptable, to a generous and reflecting people. It conquers misrepresentation by the testimony of facts. It drives away the unsubstantial visions of theory by the broad daylight of experience. It satisfies, when contemplated in its principles, and captivates when felt in its administration. Little does it leave us to fear from studied and plausible refinements, the fallacy of which has been detected in a country where they had been decorated by eloquence, fortified by philosophy, and addressed to the judgment and passions of the multitude with violent, but temporary and baleful effect. Under such a weight of evidence the stubbornness of party zeal sinks down, subdued and exhausted; and the intellectual pride of man, instead of roving after discoveries, or panting for changes, is abashed at the recollection of the past, and dismayed at the prospect of the future.

This is not a season for partial retrospects, or declamatory exaggerations. For, terrible as they are, the outrages which we have to deplore, the blame is to be laid, largely indeed, but not exclusively, upon that which is called French philosophy. If there had been no previous and just grounds of complaint from the want of sympathy and mutual dependencies between the different orders of the state—none, from artificial obstructions to the acquisition of private property—none, from the profuse expenditure of the public revenue—none, from burthensome taxes—none, from unnecessary wars—none, from the injudicious, or the corrupt, or the oppressive administration of government, metaphysicians might have invented their systems, experimentalists might have boasted of their projects, and demagogues might have poured forth their invectives, without any signal or lasting mischiefs to the monarchy, or to the nation. Enough then has happened to supply men of all parties and of all classes with valuable instruction, if they really wished to be instructed. Enough has happened to put governors and the governed on their guard, against the extremes of that stiffness which bends not to unwelcome realties, and that precipitation which catches at fair appearances. Enough has happened to convince me that the preservation of the public peace among ourselves is peculiarly dependent upon the encouragement of public union and concord.

discussion between Mr. Fox and Napoleon upon the subject of assassination, I am quite unable to show how far Mr. Fox was

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If, therefore, churchmen could be brought to believe that the more enlightened part of the sectaries retain the use of common sense upon political topics, it would hardly be denied that the recent and melancholy experience of a neighbouring state must have disciplined their minds into some degree of sober and serious reflection. It is my wish to conciliate rather than to provoke them. It is my opinion that no harm would be done if churchmen, acting towards them in the true spirit of Protestanism, would endeavour to convince them that in the safety and prosperity of the Established Church sectaries would find the most effectual barrier against the jealousies and prejudices which they entertain against each other.

Base it were at such a juncture, if I should permit any personal considerations to restrain me from communicating to you, dear Sir, or to the public the result of my own long-continued, various, and intense observation upon the sentiments of individuals, and the characters of classes. Let me then confess, even at the hazard of giving offence in some quarters by the confession, that English Presbyterians and English Catholics do not appear to me the most numerous, or the most formidable enemies now to be found among us, to the church, or to the state. In all probability other persons to whom I advert, have, for the present, very imperfect and confused views of the extravagancies into which themselves, or their successors, may hereafter be precipitated by what they might think favourable opportunities for seizing that ascendancy to which they are supposed by many vigilant and dispassionate observers to aspire. Heaven forbid that the arm of the secular power should be raised against them, or the sacred rules of toleration violated, while they are content to multiply converts, without transgressing the laws. Yet, as slaves to their own prepossessions and passions, or dupes to the wiliness of other men, they may become dangerous instruments in disturbing those ecclesiastical and political systems which have been long, and I add with equal sincerity and confidence, most happily established in this kingdom.

"The worst of madmen," says a poet of our own country, "is a saint turned mad;" and, if I were asked from what quarter the greatest havoc to human virtue and human happiness was to be apprehended, I should say from a host of armed fanatics, cajoled and instigated by leaders, who take King Jesus for their watchword, while they "say in their hearts there is no God."

Much as I condemn the levity and profaneness of Voltaire, I am sometimes pleased with the shrewdness of his observations

confirmed in his former notions, or beguiled into new ones, by the arguments or the courtesies of the French Emperor. I must, however, be permitted to add, that unless the Reviewer has received some particular information which has not reached the generality of his readers or myself, he should have been content with opposing Mr. Fox's aphorisms, as expressed in Mr. Fox's History, without communicating to the public a vague suspicion that Mr. Fox had made Napoleon the keeper of his conscience, and that the gratification of his vanity had overcome his scruples, his discretion, his loyalty, and his humanity. If Mr. Fox, during his stay at Paris, had taken up new and dangerous opinions on the subject of Tyrannicide, did he, on his return, [try his skill in what to him was a new, and what in him and every other minister would be the despicable trade of dissimulation? Did he so far conceal his bias towards assassination, as to elude the suspicions of a sagacious sovereign, by whom he was called to a most honourable office, and of a Parliament, before which he had occasion to speak upon the most important questions of foreign and domestic policy?

Mr. Fox thus proceeds: "if such cases ever existed, they must

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upon political subjects, and I believe that the Sovereigns of Protestant states have a real and great interest in attending to the cautions which are suggested to them in the following passage:

"Arrêtez-vous un moment près du cadavre exhumé de ce célèbre Empereur Henri IVme. plus malheureux que notre Henri IVme. Roi de France. Cherchez d'ou viennent tant d'humiliations et d'infortunes d'un côté, tant d'audace de l'autre, tant de Princes immolés à la religion: Vous en verrez l'unique origine dans la populace; c'est elle qui donne le mouvement à la superstition. C'est pour la Forgerons, et les Bucherons de l'Allemagne, que l'Empereur avoit paru pieds nus devant l'Evêque de Rome; c'est le commun peuple, esclave de la superstition, qui veut que ses maîtres en soient l'esclaves. Dès que vous avez suffert que vos sujets soient aveuglés par la fanatisme, ils vous feront à paraître fanatique comme eux; et si vous secouez le joug, qu'ils portent, et qu'ils aiment, ils se soulevent. Vous avez cru que plus les chaînes de la religion, qui doivent être douces, seraient pesantes et dures, plus vos peuples seraient soumis: vous vous êtes trompé: ils se servent de ces chaînes pour vous gêner sur le trône, ou pour vous en faire descendre."—Essai sur les Mœurs et l'Esprit de Nations, tom. ii. cap. 46.

have been in instances where trial was wholly out of the question, as in that of Cæsar and other tyrants. But when a man is once in a situation to be tried, and when his person is in the power of his accusers or judges, the danger to the community never can be such as to justify the violation of the fundamental rules of criminal proceedings." Mr. Fox, also, expresses a very strong doubt whether such violation can be justified by any other circumstance whatsoever. In the intermediate passage, where he speaks of Cæsar and other tyrants, I find the want of Mr. Fox's usual perspicuity and precision. The topic immediately before him was, how far self-defence, or any other cause could warrant or palliate the breach of judicial rules. But, "in the case of Cæsar and other tyrants," trial, according to his own account, "was out of the question." In such a case judicial rules could neither be preserved nor violated; and therefore the argument drawn from cases in which there is a trial, is not directly applicable to cases in which there is no trial. His mind had passed rapidly from Strafford, who was a subject and a minister, to Cæsar and other potentates, whom he calls tyrants—from Strafford, who had perished under an unjust sentence, to Cæsar and other persons who had perished without any sentence at all; and to whose case, therefore, considerations founded upon "the departure from the sacred rules of criminal justice," were, in the technical language of lawyers, irrelevant. He has stated, but not with sufficient perspicuity, a case distinct from the general rule. But let this pass. What Mr. Fox's opinion was upon the reasons which might justify or excuse the destruction of Cæsar and other tyrants, who were not brought to trial, Mr. Fox has not told us, nor perhaps thought himself required to tell us, with the clearness and correctness which we are accustomed to find in his reasoning. In truth, he glanced quickly and shortly upon the case of tyrannicide, and eagerly returned to the subject from which he set out, viz. "Departure from the sacred rules of criminal justice." In regard to Charles, Mr. Fox* opposes, as unsatisfactory, the best justification of his death, that, "while he lived, the republic would never have been secure." He does not consider even the danger of the republic as sufficient to warrant

* Page 13.

more than the imprisonment or banishment of the King. He shows the futility and inconsistency of every plea drawn from the example afforded by his death; and, without justifying the mode adopted by Cromwell and his adherents, in subjecting their monarch to trial and to a public execution, he is content to call it less dishonourable than the secret assassination of Edward II. Richard II. Henry VI. and Edward V. His commendation, if such it should be called, is bestowed, not upon the justice, but the publicity of the act.

But while we reprobate the cruel persecutors of the cruel Strafford, let us not forget that, in the reign of Charles II. "intimidation, corruption, and illegal evidence were employed to obtain a verdict against Sydney; and that convictions against evidence, sentences against law, enormous fines and cruel imprisonments, were the principal engines employed for breaking the spirit of individuals, and fitting their necks for the yoke."*

I will not deny that the words "justify or excuse," may, without any great violence of construction, be applied to Mr. Fox's sentence upon the fate of "Cæsar and other tyrants." But shall it be said that persons who approve of the manner in which Cæsar was put to death, are necessarily bad citizens or bad men? Was not the deed applauded in ancient times by the humane Cicero,† the virtuous Marcus Brutus, and even the stern and ex-

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* Mr. Fox's History, page 55.

The cruelty of this execrable tyrant in other respects ought not to be forgotten. "During the Usurpation men had been convicted of high treason, but simple death was the utmost infliction, and the axe or the halter put the speediest period to the existence of the criminal. But on the restoration of the monarchy, the old barbarity of the laws was admitted in its full horror. The bowels were torn from the yet breathing sufferer, and the public feeling was either disgusted or hardened by the spectacle of torture, or the most ferocious punishment."—Symmons's Life of Milton, p. 430.

† "Cæsare interfecto, inquit Antonius, statim alte extollens M. Brutus pugionem, Ciceronem nominavit, atque ei recuperatam libertatem est gratulatus."—Philippic 2nd.

Among other pleas Cicero afterwards says, "quid interest, inter suasorem facti et probatorem. Omnes boni quantum in ipsis fuit, Cæsarem interfecerunt."—Ibid.

emplary Cato? If we descend to the opinions of men in our own country, and even in our own age, we shall find that an eminently pious prelate, and another illustrious scholar, have expressed the same approbation of tyrannicide which Mr. Fox has expressed, but in terms more energetic and more copious; and that Mr. Hume, the zealous advocate for kings, has assigned for the practice the same reason, and, in substance, the same apology which Mr. Fox has assigned, in the want of trial for offenders.

"Gladium suum," says Bishop Lowth, "pariter et lyram patriæ et libertati Alcæus consecraverat. Equidem tam vehemens tamque animosum dicendi genus, a tali ingenio tractatum, permultum habuisse momenti necesse est in hominum mentibus, cum ad omnem honestatem erigendis, tum a scelere absterrendis; maxime vero in favendo, et sustentando illo vigore animi atque generosa Ἀξιώσει, quæ libertatis alumna eadem est et custos. Num verendum erat ne quis tyrannidem Pisistratidarum Athenis instaurare auderet, ubi in omnibus conviviis, et æque ab infirma plebe in compitis quotidie cantaretur Σκόλιον illud Cal-

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Akenside alludes to the story in these animated lines:

"Look then abroad through Nature, to the range
Of planets, suns, and adamantine spheres
Wheeling unshaken through the void immense;
And speak, O Man! does this capacious scene
With half that kindling majesty dilate
Thy strong conception, as when Brutus rose
Refulgent from the stroke of Cæsar's fate,
Amid the crowd of patriots; and his arm
Aloft extending, like eternal Jove,
When guilt brings down the thunder, call'd aloud
On Tully's name, and shook his crimson steel,
And bade the father of his country hail!
For lo! the tyrant prostrate on the dust,
And Rome again is free."

Pleasures of Imagination, book i.

Akenside has been suspected of a bias towards republicanism. But is every republican an advocate for assassination? Akenside more than "half meets the question" of Cæsar's death. But does it follow, from his approbation of the Roman conspirators, that he would have applauded the assassin of an English sovereign?

listrati nescio cujus, sed ingeniosi certè Poetæ et valde boni Civis?" Lowth then quotes the regicide Σκόλιον at full, and thus proceeds: "Quod si post Idus Martias e Tyrannoctonis quispiam tale aliquod carmen plebi tradidisset, inque suburram, et fori circulos, et in ora vulgi intulisset, actum profecto fuisset de partibus deque dominations Cæsarum. Plus mehercule valuisset unum Ἁρμοδίου Μέλος quam Ciceronis Philippicæ omnes."*

This passage, without the aid of a comment, sufficiently shows the judgment and the feelings of the learned writer upon the tyrannicides of antiquity.

To exquisite taste, and learning quite unparalleled, Sir William Jones is known to have united the most benevolent temper and the purest morals. But shall we accuse him of a bias towards assassination because he translated the Scholion of Callistratus, or because he has imitated a glowing and animated Fragment of Alcæus? I will quote, in part, the words of that most amiable and most wonderful man.

"Thus Harmodius shone thy blade,
Thus, Aristogiton! thine,
Whose, when Britain calls for aid,
Whose shall now delay to shine?
Dearest youths in islands blest,†
Not like recreant idlers dead,
You with fleet Pelides rest,
And with godlike Diomede."

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* Prælect. I. de Sac. Poes. Heb.

† In some Latin verses ad libertatem, Sir William Jones writes in the same strain:

"Quis myrtea ensem fronde reconditum
Cantabit? Illum, civibus Harmodi
Dilecte servatis, tenebas:
Teque fidelis Aristogiton.
* * * * * *
* * * * * *
O ter placentem Palladi victimam!
Nec tu minorem Roma dabas Jovi;

Here it must be fairly allowed that Sir William Jones, when writing English poetry, and fired at the moment with the spirit of an antient Greek poet, transferred to Britain a precedent from Athens. But if he had been writing prose, he was too good an historian, too good a logician, and too good a citizen, to have confounded the Athenian with the English government. Speaking of his own contemporaries, he tells us that the deed of

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Ex ore cum Bruti sonaret
Sanguine Cæsareo rubentis
Vox grata Divis, grataque Tullio."

If Mr. Fox had written the foregoing verses they would have been urged as proofs of his guilt, and I should have said,

" multa in homine, Demea,
Signa insunt, ex quibus conjectura facile fit;
Duo cum idem faciunt, sæpe, ut possis dicere,
Hoc licet impune facere huic, illi non licet:
Non quod dissimilis res sit, sed quod is qui facit."
Terent. Adelph.

The general tenor of Jones's political writings, and the contents of a particular book which produced a well-known prosecution at Shrewsbury, would enable me to repel any comparisons injurious to Mr. Fox. But I honour both these worthies, and both do I acquit of any bias to the assassination of kings.

Cremutius was accused for having praised Brutus, and for having called Cassius, Romanorum ultimum. In his defence he says, " Titus Livius eloquentiæ ac fidei præclarus in primis, Cn. Pompeium tantis laudibus tulit, ut Pompeianum eum Augustus appellaret. Neque id amicitiæ eorum offecit. Scipionem, Afranium, hunc ipsum Cassium, hunc Brutum, nusquam latrones, et parricidas, quæ nunc vocabula imponuntur, sæpe ut insignes viros nominat. Asinii Pollionis scripta egregiam eorundem memoriam tradunt."—Taciti Annal. lib. iv. par. 8.

If any prosecution had been commenced against Lowth, or Jones, or Akenside, for supposed inuendos in their commendation of the Roman Tyrannicides, each of them might have said with Cremutius: " Suum cuique decus posteritas rependit. Nec deerunt, si damnatio ingruit, qui non modo Cassii et Bruti, sed etiam mei meminerint." Let the accusers of such writers remember the remark of Tacitus upon the ultimate effects of such accusations. " Punitis ingeniis gliscit auctoritas. Neque aliud externi reges, aut qui eadem sævitia usi sunt, nisi dedecus sibi, atque illis gloriam peperere."

Wentworth was not less glorious, nor the meed of Lenox less brilliant.

"Noblest chiefs! a hero's crown
Let th' Athenian patriots claim,
You less fiercely won renown,
You assum'd a milder name.
They through blood for glory strove,
You more blissful tidings bring,
They to death a tyrant drove,
You to fame restor'd a king."

I should hope that a friendship begun in childhood, and continued, without interruption, through boyhood, youth, and manhood, enables me to understand the character of Sir William Jones; and, believing myself to understand it, I have no hesitation in asserting that, with all his fondness for the tyrannicides of antiquity, he would have looked with horror upon the assassin of an English king. Catching, indeed, the spirit of antiquity, when he was imitating antient poets, Sir William thus writes in his translation and expansion of the Fragment from Alcæus:

"Men who their duties know,
But know their rights and knowing dare maintain,
Prevent the long-aim'd blow,
And crush the tyrant while they rend the chain.
These constitute a state."

Such was the language of an English subject, and an English Judge. But I disdain to vindicate him, as he would have disdained to vindicate himself, from the charge of being an advocate for the assassination of Christian kings.

Let us now turn to Mr. Hume: "The maxims of antient politics contain, in general, so little humanity and moderation, that it seems superfluous to give any particular reason for the violences committed at any particular period: yet I cannot forbear observing that the laws, in the latter ages of the Roman Commonwealth, were so absurdly contrived, that they obliged the heads of parties to have recourse to these extremities. All capital punishments were abolished. However criminal, or, what is more, however dangerous any citizen might be, he could

not regularly be punished otherwise than by banishment; and it became necessary, in the revolution of party, to draw the sword of private vengeance; nor was it easy, when laws were once violated, to set bounds to these sanguinary proceedings. Had Brutus himself prevailed over the Triumvirate, could he, in common prudence, have allowed Octavius and Anthony to live, and have contented himself with banishing them to Rhodes or Marseilles, where they might have plotted new commotions and rebellions? His executing C. Antonius, brother to the Triumvir, shews evidently his sense of the matter. Did not Cicero, with the approbation of the wise and virtuous of Rome, arbitrarily put to death Cataline's associates, contrary to law, and without any trial or form of process? And if he moderated his executions, did it not proceed, either from the clemency of his temper, or the conjuncture of the times? A wretched security in a government which pretends to laws and liberty."*

If any man will calmly compare the foregoing passages, which I have quoted fully and fairly, with the words of Mr. Fox, he will find me justified in maintaining that Mr. Fox held no other opinion than Bishop Lowth and Sir William Jones did upon the tyrannicides of antiquity, and that he has assigned no other reason than Mr. Hume did for the practice.

But would it be consistent with common candour, or even common sense, to infer from these opinions that Bishop Lowth, or Sir William Jones, or Mr. Hume, or Mr. Fox, would have stood forth as the advocate of a Jaques Clement, a Ravaillac, a Gourney, or a Montravers, or a Tyrrel, and his three bloody associates, Slater, Dighton, and Forest?

In looking back to these odious offenders, we can hardly fail to observe, that religious zeal is not less treacherous, and perhaps more sanguinary, than political. The English assassins just now mentioned were profligate hirelings. But the French regicides dispatched their victims voluntarily, cordially, gratuitously, and with a latent feeling, common to the Pharisees of old, and their Christian successors in bigotry, that they were "doing God service." Fanaticism, under all disguises,† and at

* Essay on the Populousness of Antient Nations.

† See APPENDIX, No. II. p. 543.

all times, is pregnant with danger to all the members of society, from the highest to the lowest. But if I were asked where a monarch who governs well, or a monarch who governs ill, is personally most safe, I should have the testimony both of history and philosophy in my favour, when I said—in a land of civil and religious freedom. There, and there only, the moderation and the magnanimity inspired by freedom throw a curb upon popular fury, and there tyranny itself is more deeply dreaded and more keenly hated than the tyrant.

Who shall answer for the general opinion which he might himself have adopted, if he had been a native of Greece or Rome? For my part, I approve not the encroachments of Julius Cæsar. But if, with my present feelings, I had been in the Senate House, I should have arrested the arm of the conspirators, and though told even by Brutus, that "the great Julius had bled for Justice' sake," I should not have waited for the speech of Antony before I had said, with the indignant plebeian,

> "We'll burn his body in the holy place,
> And with the brands fire all the traitors' houses."*

I detest the cruelties of Domitian, and yet I am overpowered with an involuntary and irresistible emotion of pity, when I read "illum correpto deductoque ad terram Stephano† colluctatum

* Shakspeare.

† If the account which I have heard of some circumstances in the late assassination of the unfortunate Emperor Paul be accurate, there is a strong resemblance in the resistance made by him and by Domitian to their respective murderers. The perfidious and sanguinary Chancellor of Paul might, in some respects, have found his own prototype in Stephanus, "qui Domitillæ Procurator, et tunc interceptarum pecuniarum reus consilium obtulit * * * * professusque conspirationis indicium, et ob hoc admissus, legenti traditum a se libellum, et attonito suffodit inguina."—Suetonius, ibidem. Stephanus, no doubt, executed the deed which the Russian Chancellor was content only to encourage and to facilitate. But each betrayed his royal master, under pretence of revealing a crime, to which the one was an accessory, and in which the other was a principal. The guilt of the Chancellor, from his high and confidential situation, was greater than the guilt of Stephanus, who held only a subordinate employment, and was under some fear for his own personal safety.

diu, modo ferrum extorquere, modo, quanquam laniatis digitis, oculos effodere conatum." *

I honour the Roman Senate when, instead of leaving Nero to violence from the dagger, or perfidy from the poisoned bowl, they passed a decree "ut puniretur more majorum." My abhorrence of the enormities perpetrated by that tyrant is vivid and inextinguishable; and yet my heart shrinks within me, when, upon the approach of the Equites who had been sent to drag him alive from his palace, I read "trepidanter effatus

"Ἵππων μ' ὠκυπόδων ἀμφὶ κτύπος οὔατα βάλλει,
"Ferrum jugulo adegit, juvante Epaphrodito a libellis." †

I know the arguments which antient writers have used in defence ‡ of tyrannicide, and against it. I know the impressions which are made upon the minds of scholars when they read

—— "The songs
Of Grecian Bards, and records writ by Fame
For Grecian Heroes." §

But let us not go back to Cæsar, or Jason of Pheræ, or the Siculi Tyranni,|| if we are anxious to learn how we should ourselves judge, or feel, or act, in the relations in which we stand to our own governors, in our own times. We live in a more civilized age. We are protected by milder governments. We are guided by the light of a more pure and holy religion. "All kinds of government," says Mr. Hume, "free and absolute, seem to have undergone, in modern times, a great change for the better, with regard both to foreign and domestic management." ¶ We cannot reflect upon antiquity, nor indeed upon later times, without perceiving that "the Tyrannicide or assassination approved by ancient maxims, instead of keeping tyrants and usurpers in awe, made them ten times more fierce and unrelenting. We cannot

* Suetonius, in Vita Domitiani, par. 17.
† Suetonius, in Vita Neron. par. 49.
‡ Some of those arguments may be found in the Tyrannicida of Lucian, see vol. ii. ed. Reitz.
§ Pleasures of Imagination, book ii.
|| Vid. Hor. Epist. ii. lib. i.
¶ Hume's Essay on Civil Liberty.

converse with men of ordinary or extraordinary sense and virtue among our contemporaries, without observing that "Tyrannicide is upon that account," (and, let me add, upon many more account deeply interesting to the cause of morality,) "abolished by the law of nations, and universally condemned as a base and treacherous method of bringing to justice those disturbers of society."*

I should look with an eye of suspicion and disdain upon any moral philosopher, or any political writer, or any religious teacher, who would make the smallest compromise upon this important subject. Tyrannicide, I know, was practised by the ancients in the hour of rage, and approved in calmer seasons. From the frailty and wickedness of man there is danger, lest that which has often happened in remote periods should sometimes happen again. I am no stranger to the blindness or the fury of fanaticism, whether political or religious. My reason tells me that they are able to burst the strongest barriers of justice and humanity. My imagination can set no bounds to their ravages, when opportunities and incitements to their action unhappily occur. I have been an immediate observer of the effects which the temporary situations of public affairs, or the momentary passions of private men can even now produce. I have been present when my fellow-christians and my fellow-subjects have attempted at least to excuse what they were not hardy enough to justify, or depraved enough to commit. I have heard some expressions of satisfaction, when the plot for the assassination of Paul succeeded. I have witnessed some involuntary signs of regret, when another plot, aimed against the life of another Emperor, was unsuccessful.† I have resisted, and I always shall resist, the principle of assassination, unequivocally and universally in Christian countries. I will not, in any case, hold parley with distinctions and exceptions. I feelingly remember that "there is no virtue or moral duty but what may, with facility, be refined away, if we

* Hume's Essay on Passive Obedience.

† Of the detestation in which Mr. Fox held assassination, we have a decisive proof in his behaviour to the miscreant who offered his services in the murder of Napoleon. This well-authenticated fact may be opposed to the surmise and insinuations of the Reviewer upon Mr. Fox's theoretical opinions.

indulge a false philosophy, in sifting and scrutinizing it, by every captious rule of logic, in every light and position in which it may be placed."*

I should turn away with disgust and with horror, from the most ingenious reasoning, and the most eloquent remonstrances upon extreme cases, real or hypothetical. In regard to cases which fall short of extremes, I have often reflected upon the difficulty which we find in fixing upon adequate and appropriate terms to describe them—upon the unsteadiness of our judgments, as different parts of a complicated subject present themselves to our mind in rapid and disorderly succession—upon the impossibility of anticipating all the circumstances which constitute the merits or demerits of a particular question when it occurs—and above all upon the danger of familiarising our thoughts to any strong determination upon our own manner of acting at a season which has not yet arrived, and in which men are usually impelled to act by the hopes they feel at the moment, or by their fears, or by their sympathy with a whole people exasperated by long oppression, and resolved to obtain redress by violence against the oppressor. In the fearful contemplation, therefore, even of such cases as, in appearance, are not the worst, I should oppose the warnings of experience, the authority of laws, the sanctions of religion, and the voice of unperverted nature itself, to the cold abstractions of theory, the obliquities of casuistry, and the extravagancies of fanaticism.

"A speculation," says Taylor, "considers the nature of things, abstractedly from circumstances physically or metaphysically, and yet, when it comes to be reduced to practice, what in the head was innocent, will, upon the hand, become troublesome and criminal."†

In the whole circle of politics there is, indeed, no question upon which we can say more justly, than in the spirit of Taylor every good man will be disposed to say, upon the most plausible apologies for assassination: "They ought not easily to be drawn into rules, lest" factious and vindictive men "turn them into a pretence."‡

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* Hume's Essay on the Original Contract.

† Ductor Dub. book i. cap. 4. ‡ Ibid. chap. 2.

There is no question upon which my head or my heart requires any shorter or surer direction than upon this topic, I find in this aphorism: by the secret poinard, or the treacherous cup, Thou shalt do no Murder.

But hateful and pernicious as I know the crime of assassination to be, from circumstances innumerable and quite inexcusable, there is another species of homicide still more hateful and more pernicious. I mean that which is effected by a perverse interpretation of laws—that by which our best security is abused to our destruction—that from which the meanest and the greatest subject can rarely escape, when the conspiracy against life is conducted by a crew of perjured witnesses, and deluded or corrupted jurymen: by the cavils, sophistries, declamations, and invectives of venal crown-lawyers; by the acquiescence or the aid of temporizing judges; and at the mighty nod, or with the approving smile, or with the anticipated connivance of sceptered oppressors. Under the Tudors and the succeeding dynasty, such murders were not unfrequent, and to this hour the havoc made by them among the innocent and the guilty chills my soul with horror. Since the expulsion of the Stuarts one attempt only of this kind has, I believe, been made among us. But it was marked, as I have heard from an eminent lawyer, with the peculiar demerit of combining accumulative with constructive treason. It was foiled, as I have read in the chronicles of the day, by the good sense and firmness of an English jury; and it gave occasion for a keen-eyed observer to say of the prime mover in this meditated deed of blood, "Jamdiu sullaturit animus ejus et proscripturit."*

It is difficult to frame clear and definite laws, and it might be yet more difficult to execute them against offenders who, like the persons of whom I am speaking, skulk behind precedents and analogies; and in the quiet course of earthly affairs, there is nearly sufficient protection for us in the integrity, or at least the discretion, of individuals, and in the authority of public opinion. But the assassin, unless he be employed by wicked politicians for a wicked end, is always exposed to detection; and upon detection punishment follows closely and surely; and

* Cic. ad Attic. lib. iii. Ep. xii.

along with punishment go the loud and just execrations of his indignant fellow-creatures.

Who among us has not shed a tear of pity, when he read the tragical end of the infatuated Edward, of the headstrong Richard, of the meek and pious Henry, and of that guileless youth, who, though his brother was perhaps immolated by a later and yet more flinty-hearted usurper,* seems to have perished, somewhere or other, by the dark contrivances of an ambitious and inhuman uncle? But let it not be forgotten that, even at a later period, the cause of assassination has in this country met with a royal patron,† who, like her progenitors, and some of her successors, was surrounded by a servile herd, skilful enough and ready enough to

"Mark the keen glance, and watch the sign to hate" ‡

Yes—Elizabeth "had the person of Mary Queen of Scots within her power." Elizabeth had brought to trial, before an English court of judicature, Mary, who was not a subject of the English

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* Henry the Seventh.

† At this distance of time, and with the imperfect materials with which history has supplied us, we have no clue to the extent of the immediate and real guilt of Henry VII. or Richard III. in the cruel murder of English princes. As to later times, Burnett tells us, upon the authority of Tyrconnel's papers, said to be found at Dublin after the flight of James the Second, that, in a letter from that nobleman to the Queen at St. Germain's, he professes to have "no hope, except in Jones's business"—that, from the information given to Burnett by Lord Caermarthen, "Jones had been commissioned to assassinate William the Third;" and that, according to another of Tyrconnel's papers, James, "who did not like the thing, was satisfied in conscience and honour by the advice of his counsellors." I am disposed to acquiesce in any objection which tends to rescue the memory even of such a senseless bigot, and such a merciless tyrant as James, from the infamy of giving encouragment to the assassination of a competitor for the throne of England. Has it been explained to us, I would ask with Dr. Leland, "how papers of such importance were suffered to be left in the camp, when the baggage of James had been previously sent to Dublin, in expectation of a defeat?"—See Leland's History of Ireland, vol. iii. page 568.

‡ Johnson.

laws. Elizabeth had employed her minions to condemn Mary, by the grossest violation of all the rules under which the meanest offender might have found protection from the criminal proceedings of English justice. Elizabeth attempted to do more. Elizabeth, as Robertson says, "hinted to Paulet and Drury, as well as to some other courtiers, that now was the sincerity of their concern for her to be shewn; and that she expected their zeal would extricate her out of her present perplexity." When the bloody warrant had been signed, Elizabeth commanded "her secretary Davison to write a letter to Paulet in less ambiguous terms." Elizabeth is represented, under the signatures of Davison and Walsingham, as "taking it most unkindly that men professing that love towards her that you do," says the document, "should, in a kind of sort, for lack of the discharge of your duties, cast the burden upon her, knowing, as you do, her indisposition to shed blood, and especially of that sex and quality, and so near to her in blood,* as this said queen." Eliza-

* Elizabeth, I must own, met with a rival, not only to her power, but to her wickedness, in Philip the Second. By his command Antonio Perez had murdered an Escovedo, the favourite of Don John of Austria. Afterwards his Catholic Majesty stirred up a vigorous prosecution against the offender, partly in order to conceal his own share of guilt with Perez the assassin, and partly to avenge himself on Perez the pander, who had tricked him in a contemptible amour. His Catholic Majesty also, in 1568, ordered the heir of his crown, Don Carlos, to be executed, professedly, indeed, to punish an attempt which he accused his son of having made against the life of his sovereign and his father, but more probably, as historians say, to effect his purpose of marrying Isabella, to whom Don Carlos had been betrothed.—Vid. Puffendorf's Introduction to the History of the Principal States of Europe, vol. i. p. 79, in Sayer's Translation. I should be among the first to execrate and to punish such enormities, when committed by miscreants who are subject to the laws. But I scorn to extenuate or dissemble them, when they are perpetrated by the orders, and for the ends of sceptered murderers, whom the laws cannot reach. The Prince who employs an assassin, against his subjects, or his enemies,

"In semet legem sancivit iniquam."—Hor.

There is little occasion to blacken the memory of that wicked monarch, Charles II. by the aid of invidious conjectures. It is

beth hypocritically talks of the restraints which sex and quality, and near relation, imposed upon her own conscience, in the very moment when her ministers, in her name, by her command, and for her ends, were encouraging Paulet to imbrue his hands in blood, without any regard to sex, or quality, or relationship. Elizabeth, when she heard of Paulet's refusal to commit the deed of horror, called him "a dainty and precise fellow." Elizabeth, when she was disappointed in Paulet and Drury, as Richard the Third had been in Sir Thomas Brackenbury, found, or supposed herself to have found, another Sir James Tyrrell in Wingfield; and by name she pointed him out as a person "who had both courage and inclination to "strike the blow." These things were done by Elizabeth in the corner of a court—done by a wretch, who, with mingled cunning and audacity, urged her own unwillingness to shed blood, as the very reason which should induce a fellow-creature and a subject to shed it without reluctance and without remorse. When she could find no hand to execute what her own depraved heart had conceived; when, by false alarms and by false accusations, she had inflamed a

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very possible that he had not formed any design against the life of Milton, who, as he says of himself, was "in darkness, and with danger compassed round," and who, as Richardson informs us, "apprehended himself to be in danger of his life; first from public vengeance (having been very deeply engaged against the royal party), and, when safe by pardon, from private malice and resentment. He was always in fear; much alone, and slept ill." —Richardson, page 291. I know the last biographer of Milton to be largely gifted with learning, taste, acuteness, candour, benevolence, and piety, and therefore I shall quote the words which he uses after producing the testimony of Richardson: "Milton's apprehensions were not those of a weak mind, or felt without sufficient cause. The murder of Dorislaus and of Ascham, at the Hague and at Madrid, had shown to the world that royalist vengeance could assassinate; and the fate of Ludlow, pursued with daggers into the heart of Switzerland, fully demonstrated that at the time of which we are speaking, party rancour had resigned no portion of its revengeful and sanguinary atrocity."—Symmons's Life of Milton, page 462. I am much disposed to acquit Charles himself of any murderous purpose against Milton. But what apology has yet been framed for his participation in the death of Doryslaus and Ascham?

whole Parliament, and deluded a whole people, into compliance with her infernal wishes; when she had employed every artifice of female craft, and every engine of regal power, to "secure the advantages that might arise from Mary's death, without appearing to have given her consent to a deed so infamous;" Elizabeth, as was justly said by the unfortunate victim of her tyranny, set the first example of violating the sacred person of a sovereign prince. "She violated," says a sagacious and indignant historian, "the most established principles of law and justice, the honour of hospitality, the reverence of her sex, the holiness of religion, the security of engagement, the ties of relation, the feelings of humanity, the sanctity of innocence, and the majesty of kings."

"Scelus hoc quo nomine dicent,
Qui Bruti dixere nefas."*

Compared with the complicated and systematic wickedness of Elizabeth—a sovereign, and the descendant of sovereigns—with her envy, with her hypocrisy, with her wanton insolence, with her savage cruelty, with her outrages against royalty, and with her apostacy from nature, the guilt which an impartial man would ascribe to the destroyers of Charles I. and the yet more atrocious murderers of Louis XVI. must strike his mind with diminished surprize, diminished terror, and diminished detestation.

As to the Reviewer, I am persuaded that he holds the same sentiments with my own, upon the odious and infamous practice of assassination. But I shall not apologize for the freedom with which I have examined, and endeavoured to refute, his insinuations against Mr. Fox, as the advocate of modern assassins.

I read with equal surprize and concern the broad declaration of the Reviewer in the British Critic, that "in terms proceeding from a spirit of the most morose and illiberal bigotry, Mr. Fox every where sedulously expresses himself against churchmen and the church." The levity with which Mr. Fox speaks of the Address from Oxford is, I confess, offensive to me, for I hold with Sir William Jones, that "wit ought to be wholly banished from

* Lucan, lib. viii.

historical composition."* Indeed I have always felt the strongest indignation at the sarcasms of Gibbon, and the raillery of Voltaire, when misplaced in history, and when misdirected against religion. But if in the gravest and severest terms of reprobation I should have expressed my own sentiments upon the language of many prelates and many ecclesiastics in the reign of James, I should not have been conscious of any "illiberal bigotry against churchmen and the church;" and perhaps I should have been impelled to adopt such terms from my conviction that the solid interests of the church are inseparably connected with the constitutional liberties of the subject, and with such prerogatives in the crown as are not unconstitutional."

No part of Mr. Fox's History excited a more powerful interest in my mind than that in which he describes the execution of the Duke of Monmouth. I reverence the learning and disinterestedness of Bishop Hooper,† the piety of Bishop Ken,‡ and the general moderation of Archbishop Tenison. But I shuddered on reading the behaviour of Bishop Ken and Bishop Turner § to the unfortunate nobleman. Among the most rigid accusers of Mary Queen of Scots, no one has stood forth as an apologist for the brutal behaviour of Fletcher, the Dean of Peterborough. Yet a better plea might be urged for his justification than can be adduced in favour of our two English prelates. Mary died in the belief and profession of a religion which the Dean considered as unauthorised by the Scriptures, and as dangerous to her salvation. Monmouth lived and died a professed and sincere member of the English church. The spirit of the times may form some sort of excuse for the Bishops, in dwelling before the mo-

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* Preface to Nadir Shah.

† Without any application for preferment he was made Dean of Canterbury by Queen Mary, while William was in Holland, and afterwards in the reign of Anne, when her Majesty wished to remove him from the see of St. Asaph to that of Bath and Wells, he refused to be translated, till the importunity of his friend Dr. Ken, the deprived Bishop, overcame his reluctance.

‡ The character of Bishop Ken has been drawn by the hand of a skilful master, Mr. Thomas Zouch. See page 11 of his Life of Isaac Walton, No. 5.

§ According to Rapin these were the two prelates who on the scaffold disputed with Monmouth about non-resistance.

ment of execution upon those topics of non-resistance, &c. which, as the Reviewer tells us, were then of great weight, but have since fallen into less consideration. I hope, however, that such topics will always be remembered by my countrymen, often be considered by them, always stripped of theoretical disguises, always watched in their practical tendency; and that the opinions of Monmouth's spiritual counsellors upon those topics will always be condemned by English subjects, and always disclaimed sincerely and unequivocally by English ecclesiastics. My disapprobation of the behaviour imputed to the Bishops is chiefly directed against the confession, which they endeavoured to extort from a fellow-creature who had fallen from the height of prosperity, who saw death before him in its most terrific form, who meekly acknowledged the justice of his sentence, and who seriously considered himself as standing upon the verge of eternity. But "no confession," says the Reviewer, "that Monmouth could make, of which his rebellion against James, and his connection with Lady Harriet Wentworth did not form parts, could be received by the Bishops as such * according to the rubric; the

* I do not distinctly understand, to what the phrase, *as such*, refers—could not a general confession, as such, have been accepted on the scaffold, without any violation of the rubric? This is the very *res qua de agitur*.

Upon a subsequent perusal, I am inclined to believe the meaning to be this: "No confession Monmouth could make, of which his rebellion against James, and his connection with Lady Harriet Wentworth did not form a part, could be received by the Bishops according to the rubric," inasmuch as that rebellion and that connection did not form a part of that confession. If this be the meaning of the learned Critic, he will pardon me for saying that, in my opinion, the passage gains nothing in precision, and loses something in perspicuity, by the addition of the words "as such." It would have been intelligible to any reader without such addition, and after repeated trials was perplexing to my mind, with it. But when the explanation I here offer is admitted, I see no reason for altering the terms in which I have stated the rem qua de agitur between the Reviewer, as the accuser of Mr. Fox, and myself as his advocate. The rubric does not, like a book of casuistry, set before us a long series of particular cases, and then point out those in which a minister is to require special confession, and those in which he may dispense with it, and be content with a general one. The same rubric, indeed, does con-

censure of Mr. Fox ought therefore to have been directed against the rubric itself; not against men who simply obeyed the directions of the church in which they occupied high stations, and were therefore particularly pledged to observe them."

Upon any other occasion I should have felt the strongest reluctance to enter into any discussion upon the rubric of the Church of England, while I was expressing my opinion upon the merits of Mr. Fox as an historian. But the reflection made with so much seriousness and so much confidence by the Reviewer has connected the subject with a material event in the history of our country, and has excited in my mind an additional and very unexpected interest. Whether Mr Fox has blamed the Bishops indecorously, or whether he ought to have blamed them at all, are questions very distinct from his right to blame the rubric. For the rubric did not forbid the Bishops to receive from Monmouth a confession in which his rebellion against James did not make a part, and therefore the high stations which they occupied in the church did not imply such a pledge to the observance of the rubric as required them to demand from Monmouth such a confession as included directly and specifically his rebellion against James. In order, then, not so much to vindicate the memory of Mr. Fox as to explain the obligations really imposed upon

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tain directions, according to which, the minister under certain circumstances is to call for a particular confession from a man who is desirous of taking the sacrament, and, also, to move a sick man to confession when he is troubled in his conscience, and wishes to be absolved. But it does not contain either general or special directions for a clergyman to require either general or special confession from a person who, like Monmouth, was at the place of execution: and this is the very point upon which the Reviewer and I are at issue. If, then, generally, though tacitly, the rubric permitted the Bishops to accept a general confession, upon such an occasion, the Reviewer does not stand in need of any aid from me to discover, that the particular case of Monmouth, both in his rebellion against James, and his intercourse with Lady Harriet Wentworth, not being particularly excepted, falls under the general permission.

This minuteness, I fear, will be tiresome to my reader. But it will convince the Reviewer of my respect for him, and of my great unwillingness to misunderstand him, and to be myself misunderstood.

the venerable prelates by the rubric, I shall proceed to justify my own position by the following minute and faithful detail.

It is proper for me to lay down a preliminary distinction between that which passed in the prison, and that which passed on the scaffold. I do not take upon myself peremptorily to affirm or peremptorily to deny that the rubric enjoined the Bishops to act in some respects as they are said to have acted, while they were with Monmouth in the prison. But I would be understood to deny directly and unequivocally that they were obliged, or even warranted by the same rubric to demand from Monmouth a particular confession when he was on the scaffold. Their obligation and their warrant, as I shall have occasion hereafter to repeat, if they can be found at all, must be found elsewhere than in the quarter to which alone the Reviewer has directed our attention.

In what part of the rubric, let me ask, were these prelates directed or even authorised to demand such a confession at such a time? According to the Homilies, indeed, upon obedience to the higher powers, as we shall see presently, the invasion amounted to rebellion. The doctrines contained in those homilies may be true, and may be important. But they are not made by the church, as I shall hereafter show more at large, subjects of particular confession to laymen. Doubtless the connection of Monmouth with Lady Wentworth was in the view of the homilies and of common-sense adulterous, and though some mitigating circumstances had decoyed the offender into a state of self-delusion upon the malignity of the offence, yet Tenison and Hooper, when they were with him in prison, evidently with the intention of giving him the sacrament, were justified by the rubric itself in their previous endeavours "to convince him of the falsehood of his opinion." "Monmouth," says Rapin, "chose rather to deprive himself of the communion itself than to own his engagements with that lady to be unlawful." When the well-meant endeavours of these divines to convince him of his error had thus failed, they might in the opinion of some persons be farther justified by the rubric in refusing to let him partake of the sacrament.* But with that refusal ended their office, as

* The predecessor of James died in communion with the

prescribed by the rubric. Compassion and piety might have induced them to resume the subject of Monmouth's adultery,

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Church of Rome. But while it was treason to say that he lived so, his libertinism was very undisguised and unrestrained. Many ecclesiastics who attended him were men of distinguished learning and irreproachable morals. But it is no where recorded of them that they "advertised Charles that he should in no wise presume to come to the Lord's table until he had openly declared himself to have truly repented, and amended his former naughty life, that the congregation," consisting of Lords of the Bedchamber and other grave and scrupulous courtiers, "might thereby be satisfied, which before were offended."

While James was connected with Mrs. Sedley he was under the direction of Popish counsellors, and it is unknown to me whether they strictly adhered to the seventh canon of the Council of Trent, which declared it necessary by the divine law to confess before the sacrament "omnia et singula peccata mortalia, which any one does remember or can recollect by due and diligent meditation." The orthodoxy of those ecclesiastics who refused the communion to Monmouth on account of his criminal intercourse with Lady H. Wentworth, may not have been brought to the test in any religious intercourse with their frail sovereign. But nothing less than that charity "which believeth all things, and hopeth all things," would induce some men to presume, that from the same sense of duty to the authority of the rubric they would with the same firmness have forbidden James, as they forbad Monmouth, to be a partaker of the sacrament. If that rubric be so clear, so peremptory, so obligatory, as it has been lately represented, what apology can be offered for the Very Reverend Deans of the Royal Chapel, and other ecclesiastics, who in latter times must like other men have heard, and like other men have believed the stories which were in circulation about two titled courtezans, whom it is unnecessary to name?

"Paruit omnis
Imperiis, non sublato secura timore
Turba, sed expensa Superorum et Cæsaris ira."
LUCAN. lib. iii.

In their transactions with a subject and a criminal, ecclesiastics may go a great length, always with impunity, and sometimes even with credit for their official exactness and their personal sanctity. But there are certain situations in which they may suspect some convenient truth to be lurking under the beggarly elements of that philosophy which taught "omnes virtutes mediocritate quadam esse contentas; (Cicero pro Murena) and if

while they were with him upon the scaffold. But as the sacrament was not to be administered to him there, the directions of the rubric, as connected with it, were no longer applicable. Even the topics of non-resistance and rebellion ought to have been discussed in the prison rather than upon the scaffold; and if Monmouth, before receiving the sacrament, had appeared to his spiritual counsellors obstinate or impenitent, they might perhaps, even upon those subjects, as well as upon that of adultery, have exercised their own discretion in refusing him the sacramental bread and cup. "If any man be an open and notorious evil liver," says the rubric, "or have done any wrong to his neighbours by word or deed, so that the congregation be thereby offended; the curate, having knowledge thereof, shall advertise him that in any wise he presume not to come to the Lord's table until he hath openly declared himself to have truly repented and amended his former naughty life, that the congregation may be thereby satisfied, which before were offended." Monmouth by his rebellion may be said to "have done wrong to his neighbours," and by his intercourse with Lady Wentworth to have been "a notorious evil liver." But what is the Curate required to do by the rubric? He is to "advertise him that "he presume not to come to the Lord's table." What is the curate required to do even in the administration of the sacrament? "To exhort the people that they make," not a particular, but "an humble confession of their sins," and that, not to man, but "before Almighty God." What is the ground upon which previously to the sacrament the curate is required to advertise any person who would partake of it? "That the congregation, which before were offended, may be satisfied, when

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they had been asked why they swerved a little from the letter of the rubric, some of them might have pleaded a scriptural rule against "over much righteousness," and others might have waxed bold under the shelter even of a heathen moralist,

> "Insani sapiens nomen ferat, æquus iniqui,
> Ultra quam satis est, virtutem si petat ipsam."
> (Hor. Ep. 6. lib. i.)

Shade of Whiston, wilt thou judge these men? Are not their ways unequal? In all thy own intercourse with kings or with subjects, were not thy ways equal?

the offender has openly declared himself to have truly repented and amended his former naughty life." Were the spectators, whom I am willing to consider as the congregation, so offended, to the knowledge of the Bishops, that they would not have been satisfied without the particular confession which the Bishops exacted? If they were not so offended, the Bishops' requisition was authorised by the rubric prefixed to the communion. If they were so offended, the requisition was ill-timed, and therefore unauthorised, because the season for administering the sacrament had passed by. Now for the honour of the English Church I will subjoin part of a note upon this subject, written by the learned and pious Dr. Nicolls. "Some severe discipline, such as the repulse of Theodosius, might not be amiss, while it was grounded only upon piety and zeal for God's honour, as it was in ancient times. But afterwards other not so warrantable passions mixed in the minds of those who ministered in holy things, and some persons were debarred the communion out of pique and resentment. There was an imperial injunction prohibiting all, both Bishops and Presbyters, from shutting any one from the holy communion before just cause be shown whether the holy canons do give them the power so to do;* and the canon did not also allow a discretionary power to the priests to thrust away every ill person from the sacrament: Etiam criminosus ingerens se in Communionem non est repellendus, sed potius privatim inducendus et admonendus. The compilers of the rubric in Edward the Sixth's time limited this discretionary power of the minister even to notorious crimes, to admonish such persons that they first abstain, and only upon obstinacy to repel. But nevertheless this gave occasion to several exceptions and disputes, and therefore in the last revision of the Common Prayer, repulsion was not left to the absolute power of the minister, but he was obliged to give notice to the Diocesan, and to take his advice therein; and still it remains so uncertain what is notoriety both in presumption, law, and fact, that a minister is not out of danger of transgressing this rule, if, before judicial conviction of the crime he goes farther than advising any person to abstain." Nicolls's observations may be of use to ministers in

* Vid. Novell. 123. Canon XI.

their intercourse with persons who are not placed in Monmouth's unhappy situation; and though Monmouth himself had been judicially convicted, yet they contain no principle which justifies his ghostly counsellors in calling for particular confession after the sacrament had been refused to him.

The rubric to which the Reviewer appeals, does not supply any directions for the treatment of persons who are to suffer death by a sentence of the law.* But let us see what analogies it

* In Mr. Reeve's very useful edition of the Book of Common Prayer, he has judiciously inserted a Form of Prayer for the Visitation of Prisoners, which had been annexed to the Irish Common Prayer Book by the authority of the Irish government, ever since the reign of Queen Anne. He supposes, however, that by the fifth article of the Union, Stat. 4 Geo. III. ch. 67. any such addition to the English Common Prayer is repealed and annulled. If it be so, I should be happy to hear that an act were to pass, not only for restoring the above-mentioned form to the Irish, but for introducing it into the English Prayer Book. The topics are, indeed, very pertinent, the language is simple and solemn, and a spirit of the most rational and most pure devotion prevails through the whole. The authors have largely availed themselves both of the matter and the phraseology contained in our service for the Visitation of the Sick, and in the best passages of the Commination. The minister is directed "to admonish a prisoner particularly concerning the crime wherewith he is charged, and to exhort him if he has any scruples that he will declare the same, and prepare himself for the holy communion against the time when it may be proper to administer it to him." A criminal under sentence of death is "required not to let any worldly considerations hinder him from making a true and full confession of his sins." The minister is "to examine whether he repent him truly of his sins, exhorting him to a particular confession of the sin for which he is condemned," and the particular confession to which he is thus exhorted seems to be preparatory for absolution, "which is to be granted to him, if he humbly or "heartily desire it." Let us suppose a similar form prescribed by the Church of England. Monmouth did not ask for absolution, he did not deny the sin for which he was condemned, and the dispute between him and the spiritual counsellors was merely about a name. He did not even insinuate that his sentence was unjust, and if the ecclesiastics who attended him had been specially authorised, as they were not, to require "a true and full confession of his sins," still it may be doubted whether that full confession ought not to be restricted to the instances

may suggest from the directions given to ministers in the Visitation of the Sick. The minister is to "examine whether the sick person repent him truly of his sins, and be in charity with all the world, exhorting him to forgive from the bottom of his heart all persons that have offended him; and if he hath offended any other, to ask them forgiveness; and where he hath done injury or wrong to any man, that he make amends to the uttermost of his power." "Here shall the sick person be moved to make a special confession of his sins if he feel his conscience troubled with any weighty matter. After which confession the priest shall absolve him, if he humbly and heartily desire it." Now if Monmouth had declared himself in general terms truly penitent of his sins, and in charity with all the world—if he did not feel his conscience troubled with those matters which the prelates, indeed, thought weighty, but he did not—if he desired no absolution from them—if he wished to receive their spiritual advice without asking for ease to his conscience in the particular cases upon which they insisted, I see not how analogical argu-

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"in which he had "wronged or injured his fellow-creatures," and for which a criminal under sentence of death is in the very same sentence required to "give all the satisfaction which is in his power." But if it should be said that in the beginning of the sentence "a man is required to examine himself and his estate both towards God and towards man," yet it does not appear that he is called upon to make a minute, particular, explicit confession of every sin which he at any time of life has committed against either. The plain fact is, that even full confession is recommended only in general terms, and that particular confession is explicitly required only upon the crime for which the sinner has been condemned.

Some years ago, when I was accustomed to visit persons under sentence of death, I often felt the want of a proper service. I could not persuade myself to read some prayers and some exhortations which I found in books. They seemed to me such as would be either unintelligible or unprofitable to offenders, whether obdurate or penitent, and such as the wisdom, piety, and humanity of English prelates would, I am confident, not authorise for the use of the English clergy. I will therefore repeat my earnest wish that the Irish service may be adopted, and, let me add, without addition or correction, for in its present form it appears to me to have been drawn up with the greatest possible conformity to the best possible models.

ments drawn from the rubric for the Visitation of the Sick obliged or even authorised his spiritual attendants to persevere in demanding special confession. They might have advised and instructed him upon the special guilt of any sin, whether small or great. They did advise and instruct him upon the special guilt of two offences which appeared to them very great. But they were in the rubric directed to "move him to special confession," then, and then only, when "he felt his conscience troubled." If their vindication rests upon prudence, or pity, or loyalty, or general anxiety for Monmouth's salvation, there may be room for difference of opinion upon the conduct of the bishops as influenced by such motives. But there will also be room for some men to suspect that political tenets had their share in leading the bishops to persist in a train of questions which under the circumstances of the moment must have disquieted the mind of Monmouth, with little or no probability of promoting his repentance. I hope that few men now living would imitate the example of those bishops, and I am confident that their justification must be found elsewhere than in the rubric. Mr. Fox would probably have opposed the dictates of his good sense, and the feelings of his delicacy and humanity, to the authority of the rubric, if it really had contained the directions which it is said to contain. As a well-wisher to the Church of England, I have endeavoured to show that no such directions are contained in it. "The letter" of it, as understood by myself, might serve to "make alive." But "the spirit" of it, as understood and acted upon by Monmouth's ghostly counsellors, would in many cases "kill" most cruelly.

I shall now proceed to examine how far the regulations of our church, as they respect the homilies, compelled or even warranted the bishops to require from Monmouth any particular confession while he was on the scaffold. As this subject is not familiar to the generality of readers, I shall be under the necessity of having recourse to much detail. The number of homilies in the time of Edward VI. was twenty-one. Their titles are subjoined to the thirty-fifth article. The last, against disobedience and wilful rebellion, consists of six parts. Twelve more homilies were added in the reign of Elizabeth; and among them is an exhortation in three parts "concerning good order and

obedience to rulers and magistrates." The article on the homilies, as we now have it, runs thus: "The second Book of Homilies, the several titles whereof we have joined under this article, doth contain a godly and wholesome doctrine, and necessary for these times; as doth the former books of homilies, which were set forth in the time of Edward the Sixth; and therefore we judge them to be read in churches by the ministers, diligently and distinctly, that they may be understanded of the people." Now to what extent are the laity concerned in the homilies? According to the article they are "to understand them." But from what person, at what time, and in what place are they to hear them? In the Preface, published during the reign of Elizabeth, "her Majesty commandeth, and strictly chargeth all parsons, vicars, curates, and all others having spiritual cure, every Sunday and holiday in the year, at the ministering of the holy communion; or if there be no communion ministered that day, yet after the Gospel and Creed, in such order and place as is appointed in the Book of Common Prayers, to read and declare to their parishioners plainly and distinctly one of the said homilies, in such order as they stand in the book, except there be a sermon, according as it is enjoined in the Book of her Highness's Injunctions; and then for that cause only, and for none other, the reading of the said homily to be deferred unto the next Sunday or holiday following. And when the foresaid Book of Homilies is read over, her Majesty's pleasure is, that the same be repeated and read again, in such like sort as was before prescribed." The laity, it appears, are to understand the homilies, because, says the article, "they contain good and wholesome doctrine, and necessary for these times,"* and, according to

* You will be glad, my friend, to see Bishop Warburton's account of the homilies upon non-resistance. "After the Reformation, the Protestant divines, as appears by the homilies composed by the wisest and most disinterested men, such as Cranmer and Latimer, preached up non-resistance very strongly, but it was to oppose Popery. The case was this. The Pope threatened to excommunicate and depose Edward. He did put his threat into execution against Elizabeth. This was esteemed such a stretch of power, and so odious, that the Jesuists contrived all means to soften it. One was, by searching into the origin of civil power, which they brought rightly, though for

Elizabeth's Preface, "they were printed anew as containing certain wholesome and godly exhortations to move the people to

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wicked purposes, from the people, as Mariana and others. To combat this, and to save the person of the Sovereign, the Protestant divines preached up divine right. Hooker, superior to every thing, followed the truth. But it is remarkable that this non-resistance, which at the Reformation was employed to keep out Popery, was at the Revolution employed to bring it in. So eternally is truth sacrificed to politics." See Letter 84 of the Correspondence between Bishop Warburton and Bishop Hurd, lately published. Now the difference between the conduct of the ecclesiastics at the Revolution and the Reformation seems to be this. Latimer and Cranmer intended to keep Popery out. But the ecclesiastics in the time of James did not intend to bring Popery in, though it must be owned that the submission which they inculcated in civil affairs would have put into the hands of the king such power as would eventually have enabled him to make any change he pleased in things ecclesiastical. They acted well when they resisted, and reasoned ill in the selection of the only grounds upon which resistance according to them was justifiable. The exception to the general rule, which they at first tacitly, and afterwards openly, maintained, served only to show the fallacy of the rule itself. Notwithstanding the king's supremacy, he is to be resisted when he would make Protestantism give way to Popery. Why is he not to be resisted when he endeavours to raise a system of absolute power upon the ruins of a free and mixed government? "Cum ventum ad verum esset," the Bishops distinguished. But no such distinction is expressed or even hinted in the canon; none in the oath of the king's sovereignty taken at ordinations; none in that bidding prayer, which was enjoined by Elizabeth in 1559 to be used by the clergy, which was not altered by a Committee appointed in 1661 to prepare a form of prayer before the sermon, and which describes the king as "supreme governor in these his realms, and all other his dominions and countries, over all persons and in all causes ecclesiastical as well as civil." I know not whether this was one of the propositions which the ecclesiastics in the reign of Charles II. would have thought themselves bound to retain or to qualify. But I do know that ecclesiastics in the reign of James II. were not called upon to inculcate non-resistance by that danger from Popery to the King's person which led Cranmer and Latimer to insist upon the doctrine.

The transfer of the supremacy from the Pope to Henry VIII. made perhaps that capricious and sanguinary monarch more favourable to the cause of the Reformation. But however service-

honour and worship Almighty God, and diligently to serve him, every one according to their degree, state, and vocation." But

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able it might have been in protecting a newly established church, it may in later times have produced inconveniences not foreseen by our first reformers, and experienced, but certainly not remedied, by their successors. "Can any thing," says Warburton, "be more absurd than that when the yoke of Rome was thrown off, they should govern the new church, erected in opposition to it by the laws of the old? The pretence was, that it was only by way of interim, till a body of ecclesiastical laws could be framed. But whoever considers that the body of canon laws proceeded from and had perpetual reference to an absolute and spiritual monarch, and were formed upon the genius, and did acknowledge the authority of the civil laws, the issue of civil despotism; I say, whoever considers this will be inclined to think, that the Crown contrived this interim from the use the canon law was of to the extension of the prerogative. However, it is certain that the succeeding monarchs, Elizabeth, James, and Charles, prevented our ever having a body of new ecclesiastical laws from a sense of this utility in the old ones, and a consciousness that if ever they should submit a body of new laws to the legislature, the Parliament would form one altogether upon the genius of a free church and state. This I take to be the true solution of this mysterious affair, that wears the face of so much obscurity and scandalous neglect."—Letter 81 of the Correspondence between Bishops Warburton and Hurd. I shall not presume to offer any advice to my ecclesiastical superiors about retaining or altering either the homilies or the canons. But if the Bishop be not mistaken, the constitution of the church may in some respects appear less favourable than I could wish, either to religious or civil freedom. It retains homilies which were necessary for the times, in preserving the person of the king from the machinations of Popery, and the principles of which were transferred to his power when his person was no longer in danger, and when his power, as at the Revolution, was more limited than it had been in the reigns of Edward, Elizabeth, and the Stuart line. It adheres, also, to canons which were borrowed from Popery — which are connected with the exercise of the king's power, not the safety of his person—which partake of the genius, and perpetually refer to the letter of a civil code, "the issue of despotism," and which yet are intended to regulate the notions of clergymen upon the kind and degree of that allegiance which is due to the head of what we are accustomed to call a free church and state. Such is the result of Warburton's positions. It were indecorous, I grant, to talk of scandalous neg-

the laity, before whom they were to be read, are neither directly nor indirectly required to declare any assent to them as articles of faith, nor without the grossest absurdity could they have been called upon to consent to the use of them. But what is the obligation imposed upon the clergy, as teachers of the laity? They are to "read the homilies diligently and distinctly, that they may be understanded of the people." No express injunction, nor even tacit permission, is given for reading them in any other place than the church, or at any other time than Sundays and holidays, or for any other purpose than that of conveying instruction in "godly and wholesome doctrine, and necessary for these times."

Doubtless, according to the doctrine contained in the homilies, Monmouth's invasion, as I said, amounted to rebellion, and, in the time of James, a minister reading those homilies in the church, might, for several reasons, take occasion to tell his hearers, that they contained doctrines peculiarly necessary for those times.

The principles which so long prevailed * in the church, on the

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lect; but it is venial, I hope, to allow something of "obscurity in these matters." Ecclesiastics, however, are generally required to submit to them to a varying and indefinite extent, and politicians are not wholly unable to account for the continuance of this vague obligation. In the mean time, the silent and salutary influence of knowledge and civilization has done much in mitigating the evils flowing from positive rules and institutions, which they who introduced them chiefly intended for other purposes, and which they who now retain them are not accustomed to enforce with unabated rigour.

* The political and religious disputes which preceded the reign of James I. will enable us to account for the lofty notions, which prevailed in that reign about kingly power, and we should always bear in mind that in opposition to the pretensions of the Papal See, the King of England had been declared Head of the Church, and that for this reason churchmen would be more strongly attached to the regal office. The events which had recently occurred before the restoration of Charles II. were not likely to bring about any material alteration in the language or sentiments of ecclesiastics, who, like other men, would be more strongly affected by particular and present circumstances in the adoption of general principles, and, like other men, might not always see the propriety of "submitting one general rule to ano-

divine right of kings and non-resistance, are strongly inculcated in the homilies. "Let us consider the scriptures of the Holy

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ther which is still more general."—Paley on Religious Establishments, p. 575. It becomes us at this time of day to make large allowances for what we think the prejudices and errors of our forefathers; and though it is impossible for me to commend the behaviour of the bishops to Monmouth at the time of his execution, I do not consider them as particularly blameable for the opinions they held upon the duty of obedience. Can the church boast of a prelate more learned, sagacious, meek, temperate, and pious than Jeremy Taylor? Yet in his Ductor Dubitantium he holds the same language with the bishops of Charles and James's time on the rights of kings, and he endeavours to defend them, not only by the authority of revelation, but by the law of nature. He discusses the question at large in the third chapter of his third book, and he contends, that "not only kings must be obeyed, but that subjects have nothing to do, but something to suffer, if kings be evil and unjust, cruel and unreasonable, enemies of their people, and enemies of mankind." In our own days I should be very sorry if the doctrine of passive obedience were resumed in pulpits. But I should be equally, and perhaps more sorry, if Christian teachers were directly or indirectly to expatiate upon the principles of resistance. Barrow furnishes us with a sure and a safe direction for our instruction. "Are the objections against obedience so clear and cogent, as are the commands which enjoin and the reasons which enforce it? Are the inconveniences adhering to it apparently so grievous as are the mischiefs which spring from disobedience? Do they in a just balance counterpoise the disparagement of authority, the violation of order, the disturbance of peace, the obstruction of edification, which disobedience produceth?"—Sermons, iii. 291. I allow, indeed, that in the present improved form of society, there may be less necessity than our forefathers felt for insisting upon the duty of obedience; and I even contend that for our progress both in civil and religious liberty we are indebted to the violation of those very rules which ecclesiastics in former ages carried to a most unreasonable excess. As to extreme cases, I would leave the speculative consideration of them to professed writers upon politics, and I know that when they occur in practice they usually suggest expedients which the minds of men are rarely unable to discern, or unwilling to employ. "When we assert," says Mr. Hume, "that all lawful government arises from the consent of the people, we certainly do them a great deal more honour than they deserve, or even expect and desire from us. Reason, history, and experience show us, that all political societies have

Ghost, which persuade and command us all obediently to be subject, first and chiefly to the King's Majesty, Supreme Governor

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had an origin much less accurate and regular; and were one to choose a period of time, when the people's consent was least regarded in public transactions, it would be precisely on the establishment of a new government." The present state of France is one instance in proof of Mr. Hume's position. "In a settled constitution their inclinations are often studied," and, I add, that their rights ought never to be violated, nor their interests ever neglected. In this country, "the plan of liberty," as Mr. Hume observes, "is settled, and its happy effects are proved by experience—the people cherish monarchy, because they are protected by it," and "the monarch," if he is wise, "will favour liberty, because he is created by it," and because for every purpose of reasonable and virtuous ambition he is strengthened by it.—See Hume's Essays on the Original Contract, the Coalition of Parties, and the Protestant Succession. If I were asked the ground of my obedience, I should readily answer with Mr. Hume, "because society could not otherwise subsist." If I were farther asked why, as an instructor, "I should always incline to their side who draw the bond of allegiance very close, and consider an infringement of it as the last refuge in desperate cases?" I should answer, that if the principle of obedience were slackened among a people, society could not subsist long or well. But such an inclination would by no means lead me into the gross and perilous absurdities of passive obedience; and when the advocates for those absurdities shall "carry their doctrine to such an extravagant height as positively to exclude the exceptions" arising from "extraordinary cases?" then I shall think it "necessary to insist on these exceptions, and defend the rights of injured truth and liberty."—Hume on the Original Contract, and on Passive Obedience.

After all the decrees of dogmatists, and all the subtleties of lawyers, salus populi is the ultimate rule to which every man of reflection tacitly or expressly refers every principle and measure of legitimate government, and every political right and duty both of governors and the governed. He will submit to inconvenience and wrong, because from experience he must know that submission in most cases is a less evil to himself and to society than resistance. But from that which makes submission necessary he will not transfer the name of good, to that to which he submits. He will render to Cæsar, not indeed all the things which Cæsar under all circumstances may be disposed to claim, but all, however many, or however precious, which by the authority of public law framed for the public weal, do really belong to Cæsar.

over all, and next to his honourable Council, and to all other noblemen, magistrates, and officers, which by God's goodness be

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Looking to facts, not to theories, and collecting from them the resemblances and differences of human characters and human affairs, he will come to some such conclusion as the following, upon the actual condition and conduct of subjects and princes.

With judicious culture, and in a favourable climate, Liberty, he will think, "stands like a fair and vigorous tree, teeming with the richest and noblest burthen, and by its comeliness inviting the beholder to repose under its shade. Yet, when neglected, it is soon seen with all the marks of decay. When overnursed, it "exudes from its sickly trunk a number of deformed funguses, which call themselves of that tree because they stick upon its surface, and suck out the little remainder of its sap and spirits." —See Preface to the first edition of Warburton's Julian. Even where it has assumed the most lovely form, the meanest vermin are silently busied in tainting its branches, and the "wild boar from the forest" is impatient to root it up. But royalty is a sturdier plant, which finds sustenance for itself in almost every soil, increases in strength and bulk, whether the fruits which it bears be noxious or wholesome, flourishes under the scorching sun, yields very rarely to the rude tempest,

"et quantum vertice ad auras
Ætherias, tantum radice in Tartara tendit."

I do not profess to have read more than scattered quotations from the writings of Bracton and Fortescue. I had indeed been accustomed to consider them as "the two most learned, and almost the only learned of our ancient lawyers."—Warburton. But I lately have learned from Bishop Warburton that they not only bear express testimony "to our free and limited government, "but deduce the origin of civil rights from the people."—See Warburton's Letters, 81. I would be understood to state the fact, upon the strength of Warburton's assertion, but not to express an entire and unqualified assent to the principle, which Warburton held in common with Bracton and Fortescue.

While power is exercised for the benefit of the people, few mischiefs can arise from theories upon the origin of government.

One of the fundamental articles of my political creed may be found in the language of Elizabeth to her Parliament. "I know," said the Queen, "that the commonwealth is to be governed for the good and advantage of those that are committed to me, and not of myself to whom it is committed; and that an account is to be one day given before another tribunal."

placed and ordered. For Almighty God is the only author and provider for this fore-named state and order, as it is written of God in the Book of the Proverbs: through me Kings reign, through me Counsellors make just laws, through me do Princes bear rule, and all Judges of the earth execute judgment: I am loving to them that love me. Here let us mark well and remember, that the high power and authority of Kings, with their making of laws, judgments, and offices, are the ordinances not of man, but of God; and therefore is this word, through me, so many times repeated."* "Let us all mark diligently, that it is not lawful for inferiors and subjects, in any case, to resist and stand against the superior powers; for St. Paul's words be plain, that whosoever withstandeth shall get to themselves damnation;

Upon the same article of my creed I will make a second appeal to regal authority in James the First.

"I do acknowledge that the special and greatest point of difference that is betwixt a rightful King and a usurping tyrant is in this, that whereas the proud and ambitious tyrant doth think his kingdom and people are only ordained for the satisfaction of his desires and unreasonable appetites; the righteous and just King doth by the contrary acknowledge himself to be ordained for the procuring of the wealth and prosperity of his people, and that his greatest and principal worldly felicity must consist in their prosperity."

Such is the evidence which the public address of a King to his Parliament supplies upon the duties and the uses of the kingly office; and well it were if the actions of the great were correspondent to that test which he upon another occasion laid down for enabling us to appreciate the sincerity and honour of a Sovereign.

"It becometh a King, in my opinion, to use no other eloquence than plainness and sincerity. By plainness I mean, that his speeches should be so clear and void of all ambiguity that they may not be thrown, nor rent asunder, in contrary senses, like the old Oracles of the Pagan Gods. And by sincerity I understand that uprightness and honesty which ought to be in a King's whole speeches and actions; that, as far as a King is in honour erected above any of his subjects, so far should he strive in sincerity to be above them all, and that his tongue should be ever the true messenger of his heart. And this sort of eloquence may you ever assuredly look for at my hands."

* First Part of Exhortation concerning Good Order, &c.

for whosoever withstandeth, withstandeth the ordinance of God. Our Saviour Christ himself and his apostles received many and divers injuries of the unfaithful and wicked men in authority; yet we never read that they, or any of them, caused any sedition or rebellion against authority."—"The wicked Judge Pilate said to Christ, Knowest thou not that I have power to crucify thee, and have power also to loose thee? Jesus answered, Thou couldest have no power at all against me, except it were given thee from above. Whereby Christ taught us plainly, that even the wicked rulers have their power and authority from God, and therefore it is not lawful for their subjects to withstand them, although they abuse their power; much less then is it lawful for subjects to withstand their godly and Christian Princes, which do not abuse their authority, but use the same to God's glory and to the profit and commodity of God's people."*

These general doctrines were, I doubt not, believed by the Bishops who attended Monmouth, and who in all probability thought them necessary for the times in which they lived. But they must have been aware that the homilies were farther considered as the great storehouse of arguments, fit "to be diligently read and understanded by the people," in opposition to the Church of Rome, and whether they looked to the reign of Charles II. or of his successor, they must have thought it not quite unnecessary to employ those homilies for the purpose of fixing their hearers in their attachment to the cause of Protestantism. The sixth and last part of the homily against disobedience and wilful rebellion is replete with complaints and accusations against "the injuries, oppressions, raveny, and tyranny of the Bishops of Rome, usurping as well against their natural Lords the Emperors, as against all other Christian Kings and Kingdoms, and their continual stirring of subjects unto rebellions against their sovereign lords." The subject is resumed in the third part of the exhortation, added in the reign of Elizabeth. "Let us all fear the most detestable vice of rebellion, ever knowing and remembering that he that resisteth or withstandeth common authority, resisteth and withstandeth God and his Ordinance, as it may be proved by many other places of holy Scrip-

* Second Part of the Sermon of Obedience.

ture. And here let us take heed that we understand not these, or such other like places (which so strictly command obedience to superiors, and so straitly punished rebellion and disobedience to the same) to be meant in any condition of the pretensed or coloured power of the Bishop of Rome. For truly the scripture of God alloweth no such usurped powers, full of enormities, abusions, and blasphemies. But the true meaning of these and such places be to extol and set forth God's true ordinance, and the authority of God's anointed Kings, and of their officers appointed under them. And concerning the usurped power of the Bishop of Rome, which he most wrongfully challengeth, as the successor of Christ and Peter; we may easily perceive how false, feigned, and forged, it is, not only in that it hath no sufficient guard in holy Scripture, but also by the fruits and doctrine thereof."

Knowing the indolence which prevents men from consulting evidence to which they are merely referred, and the little attention which is paid to general assertions, I have, even at the hazard of appearing tedious, produced such passages as are suited to my purpose. Now it is apparent from those passages, that the dangers to which the people of England were exposed from the see of Rome are pointed out in the very same homilies that inculcate and explain the duty of obedience to Kings; and if the Bishops were impelled by a general sense of their duty to read and expound them in the prison for the edification of Monmouth, as a member of the Church of England, we can hardly suppose that they used one part, and omitted another. Their royal master, no doubt, would have commended them for bringing home to the conscience of Monmouth the guilt of rebellion; but would he have been equally pleased, if he had been told that Monmouth had heard from their mouths the bitterest reproaches against the Church of Rome?*

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* We know the command which James issued to the Bishop of London, to suspend Dr. Sharp, who disregarding the King's injunctions to avoid controversy, had particularly distinguished himself by his opposition to Popery, and by his contempt of those "who had been induced to change their religion by such pitiful arguments as the Romish missionaries could suggest." We farther know, that when the Bishop declared his inability to obey

It is upon the present occasion important for us to ascertain, not only what are the doctrines really maintained by the Church in our homilies, but what directions are given for the use of them; and as some of those doctrines are closely connected with the case of Monmouth, the Bishops might perhaps have been justified in communicating them to him, as holden by the Church, and fit to be taught by the minister before a congregation. But that communication, if it had been made, ought to be considered as an act of mere personal discretion, and not of official obedience to any directions given in the rubric, or any other part of the ecclesiastical code. The homilies, as I have repeatedly granted, might have been read for the instruction of Monmouth while he was in prison. But I have no where met with any injunctions for ecclesiastics to demand either general or particular confessions upon any point of faith or practice, as contained in the homilies. Pity and good sense might have warranted the Bishops in requiring general or particular confession upon those actions which were inconsistent with the common rules of morality, or the common precepts of religion. But neither the rubric, nor any injunctions connected with the homilies, compelled them to call for particular confession under the circumstances in which Monmouth was placed.

Mr. Fox, I suppose, like the generality of laymen, knew little of the rubric or the homilies. But if his knowledge of them had been quite as accurate as that of ecclesiastics ought to be, he would have laid the blame, so far as blame may be due, not upon the rigour of ecclesiastical rules, but upon the zeal of ecclesiastics. Whether the Bishops can be defended upon other grounds than the authority of the rubric, is a question upon which the decision which satisfies other men may not be satisfactory to me, and versa vice the reasoning which convinces me, may not convince them. According to my notions of decorum and humanity, the Bishops would have done well not to have insisted upon the topic of obedience with such earnestness at such a time. I do not accuse, nor even suspect them of servility,

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the commands of his sovereign, James resolved to punish him, and "for that purpose employed an expedient," says Mr. Hume, "the most illegal and the most alarming."

or hypocrisy, or habitual unfeelingness. But I shall ever maintain, that upon this one occasion their attachment to a favourite doctrine carried them too far in imbittering the sorrows of one who was "at the point to die"—in ruffling the spirits of one who had seriously prepared himself for eternity—in calling for "ten words," which, if they had been uttered, might have been imputed to fretfulness under the importunity of his advisers, or to terror at the approach of death—and, above all, in presuming that the repentance of Monmouth was imperfect, while they were bending the knee before the Father of that Lord "of whom the whole family in Heaven and in earth is named"—while the headless trunk of a fellow-creature lay weltering in blood before their eyes—and when his soul had passed into the presence of that Being, "who trieth," and is alone worthy to try, "the heart and the reins." What was the language of their dying master to a thief, who, in one short sentence, had expressed his sudden and general contrition? It was this: "Thou shalt be with me in Paradise." What was the prayer blended with apology which he offered up for his own murderers, who had made no confession, and perhaps felt no remorse? It was this: "Father, forgive them, for they know not what they do!" Weak and sinful creature, whosoever thou art, king or subject, bishop or curate, "go and do thou likewise!"

They who censure Mr. Fox for his strictures upon the questions which were proposed to the Duke of Monmouth will hardly refuse their commendation to his remarks upon the omission of the Bishops to press their penitent to the only declaration by which he could make any satisfactory atonement to those whom he had injured.* "Monmouth, in the paper published at Lyme, had accused his Sovereign of having burnt London, murdered Essex in the Tower, and poisoned his brother, and there is no circumstance from which we can collect that he himself believed these horrid accusations to be true." But the Bishops, who knew the fact, were silent upon it. The critics, who must have felt that Mr. Fox could not be wrong in condemning that silence, have not been courteous enough to say that he was right. In his better days Monmouth would have blushed at the meanness

* See pages 272, 3, of his History.

of a lie; and if he had been seriously exhorted upon a subject, which in the awful hour of death left no room for self-delusion to the weakest, or self-approbation to the most obdurate of mankind, surely he would in a moment have trembled at the recollection of his guilt, and spontaneously have uttered ten times ten words of humble and contrite recantation.

Let us turn to another interesting scene in another country, not very distant from us, and now more closely united to us by a common interest in government, liberty, commerce, literature, and science.

Judicious and humane was the behaviour of Mr. Chartris and Mr. Annand, who attended the unfortunate Argyle. When Chartris came to him, "Argyle's first caution to him was, not to try to convince him of the unlawfulness of his attempt, concerning which his opinion was settled, and his mind made up."* The subject, however important it might appear to Chartris, was not resumed by him while Argyle was in prison, nor was it discussed when he was on the scaffold, though he there had the additional assistance of Mr. Annand, who, "in all probability, was an episcopalian, and had been sent to him by the government." Just before Argyle's death, they prayed with him, but did not dispute."† They reminded him, indeed, that "in his prayers he

* Page 200.

† The English rubric makes no distinctions founded on the fortunes or titles of offenders, and upon the greater danger of their example from their greater rank. Yet Monmouth was treated with a degree of severity not usually employed with ordinary malefactors. They are exhorted in the prison and at the place of execution to confess the fact for which they are to suffer, or some other heinous crime, which has, with probability, been imputed to them, and the discovery of which may procure redress for the injured party, protect innocent men from false accusation, or lead to the detection of unknown accomplices. But it rarely happens, that the Ordinary, in consequence of their denial, forbids them to partake of the sacrament. Monmouth acknowledged the invasion, and does not appear to have vindicated it—he acknowledged, also, his intercourse with an unfortunate lady, he attempted to justify it, and the notoriety of the fact may be thought to warrant the Bishops in their endeavours to correct his mistake, and awaken his conscience. Still, it is to be observed, that upon criminal connections of this kind, other of-

had said nothing of the Royal family." But they were satisfied when "he referred them in this matter to what he had said at his trial concerning the test." When he had "addressed the people on the south side of the scaffold, Mr. Annand repeated his words with a louder voice. When he addressed them a second time, in the same, or the like words, on the north side, Mr. Annand repeated them again, and added, this nobleman dies a Protestant." But there was no altercation whether the episcopalian form of Protestantism, adopted by Annand, or the Presbyterian form, professed by Argyle, was most warranted by the authority of scripture, or most likely to conduct Argyle to future happiness. Unmoved by the gentle entreaties of Monmouth, or by his repeated declarations, or by his determined resistance, the Bishops continued to harrass him, even to the last minute, with unwelcome rebukes and unavailing expostulations. But Chartris and Annand, though perhaps not inferior to the Bishops in loyalty and orthodoxy, preserved more respect for fallen greatness, and more tenderness for a conscience which, on the subject of his invasion, must have appeared misguided to both of them. They thought it no breach of allegiance to their earthly master, to be content, on this one occasion, with serving their heavenly. However adverse to the political cause of Argyle, and however convinced of his political guilt, they suffered themselves to be hurried into no offensive importunity. They resisted no distinctions which Argyle might have made between invasion and rebellion. They pronounced no harangues upon the religious obligation to passive obedience. They demanded no particular confession. They offered up no petition for the acceptance of Argyle's "general and imperfect repentance."

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fenders under sentence of death are seldom or never urged to make special confessions. Possible, too, it is, that if Monmouth had assented to the favourite opinions of the Bishops upon non-resistance, a subject upon which the rubric is silent as to confession, he might have met with milder treatment upon another subject, which under some circumstances has been supposed to fall under the directions given by that rubric for the conduct of a minister towards notorious evil livers who wish to attend the sacrament. It is very painful, but very necessary for me, to be thus minute.

At the execution of Mary Queen of Scots, even the Earl of Kent, when his sense of propriety, or of humanity had compelled him to repress the brutal zeal of Fletcher, permitted Mary to pour forth her prayers without interruption. The Bishops, after they had interposed in checking the vulgar taunts of the Sheriff who had insulted Monmouth, again expatiated upon the topics which they had been again and again desired to dismiss, and squandered in fruitless and senseless wrangling those precious and still remaining moments which ought to have been employed wholly in humble and fervent supplication. Yet their general wisdom and general goodness are indisputable, and the record of their failings may be of use, as a restraint upon the pride of other men less wise and less good, and upon the zeal of such ecclesiastics as may hereafter be called upon to perform the same melancholy duties to a public criminal.

"Mr. Fox," says the Reviewer, "where he enters into the last scenes of the lives of those who suffered for rebellion under James, exceeds in length what might be allowed to the close of an historical eulogy." "The object of all this diffusion is to recommend to our affections the memory of these men; and affection, we know, will make men look on many crimes in its object as the result of fine qualities, and political crimes ultimately as virtues. In cases in which there are no materials to work up or force into such artful eulogies, accounts solicitously particularised may introduce apparent but false occasions, to place the conduct and memory of those who condemned the act of those political martyrs, in lights both odious and ridiculous." I do not distinctly understand what is meant by "a false occasion." But I do suspect that in the foregoing passage there is a lurking insinuation that Mr. Fox had stepped beyond the confines of history into the regions of poetry.

"Καὶ ποῦ καὶ βροτῶν φρένας
ὕπερ τὸν ἀληθῆ λόγον
δεδαιδαλμένοι ψεύδεσι ποικίλοις
ἐξαπατῶντι μῦθοι."*

* Pind. Olymp. 1.

The question to my mind is simply this. Did the circumstances which Mr. Fox relates pass in the prison, and on the scaffold, or did they not? If they did, my judgment upon the merits of Mr. Fox's History, as a composition, tells me that in his manner of relating these circumstances, Mr. Fox has performed the part of a faithful and wise historian. If they did not, my sense of morality tells me that he is a flagitious slanderer. As to the diffusion to which the Reviewer objects, it is merely a question of taste. If it be converted into a question of party, there are men to whom "disticha" might appear "longa," if employed to throw blame upon the Bishops who attended Monmouth. But there are other men who would be inclined to say

"Non sunt longa, quibus nihil est quod demere possis."*

With a delicacy most honourable to his discernment and his feelings, Clarendon informs us that "the saintlike behaviour of the blessed martyr, and his christian courage and patience at his death, are all particulars so well known, and have been so much enlarged upon, in a treatise peculiarly writ to that purpose, that the farther mentioning it in this place would but afflict and grieve the reader, and make the relation itself odious as well as needless."† But if Clarendon had "told" the melancholy story of that time, he would have found nothing to censure in the conduct of Juxon, and the commendations due to that prelate have been amply bestowed by many writers. If, however, Charles had been attended by the Puritan teachers of the age, they would, in all probability, have insisted on controversial topics; and for the honour of God, and what they called the true faith, would have endeavoured to make a convert of the royal sufferer. Doubtless, if such a frightful scene had passed, it would have been the duty of historians to reprobate the unfeeling bigots.

Upon looking into Gilbert Stuart's History of Scotland, I find that he has employed nearly four pages closely printed in octavo, upon the dismal circumstances which occurred the night before the execution of Mary; and that to the odious spectacle in the hall at Fotheringay he has assigned nearly five pages more.

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* Martial, lib. ii. ep. 77. † Hist. book xi.

I see not one particular which a good man would wish to be omitted, and in this part of his history, the narrative of Stuart, in clearness, fullness, and pathos, surpasses even that of his eloquent predecessor, Dr. Robertson.

I am really unable to discover the ground upon which Mr. Fox can be accused of employing "diffusion to make men look upon the crimes of the object of their affection as the result of fine qualities, and political crimes ultimately as virtues."

If James had been successful in his attempts to establish Popery, and to acquire what the Reviewer calls, "such a share of superiority and power as would have placed absolute authority too nearly within his reach," his opponents,* I hope, would have been the objects of affection to the accuser of Mr. Fox, as well as to myself. Many of the crimes imputed to them would be

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* They who yielded to the King in civil, but resisted him in ecclesiastical affairs, have little claim to please, either for the keenness of their foresight, or the consistency of their logic. When the king is called supreme, over the church, we presume that he is bounden to support that church, as it is recognised by the legislature. But, in point of reasoning, why should supremacy imply unlimited and arbitrary power in things civil, when it does not imply such power, even according to the avowed notions, and resolute measures of James's Bishops, in things ecclesiastical? In point of fact, if the King should gain an excessive ascendancy in the state, and if it be criminal to resist him in his endeavours to gain it, what practical security is there for the church, when it becomes his will and pleasure to introduce by force a new form of religion, and to set himself, or the Bishop of Rome, or the Patriarch of Constantinople at the head of it? In such a case, he might with some plausibility urge the plea of conscience, and duty towards the Deity; a plea, which if alleged in vindication of his encroachments upon our civil rights, would hardly impose upon the meanest understanding.

I have in page 491 observed, that the Bishops set up a distinction which the service, canons, and homilies of the church do not. But the writers of that service always assumed that the ecclesiastical supremacy of the King, which had been originally conveyed to him on the introduction of Protestantism, would be employed by him uniformly and solely for the protection of the Protestant cause. The fault of the Bishops was their want of discernment, that the supremacy of the Sovereign in the state, also, was in its principle conditional, and implied an obligation

admired by us as "the result of fine qualities." Their "political crimes" would have been considered, not "ultimately," but primarily and unmixedly "as virtues." The sufferer would be called by us a hero. We should find a patriot in the rebel, and a martyr in the heretic. As to Russell and Sydney, I shall not dissemble that their memory will ever be precious to me, that I shall ever love their virtues, ever reverence their talents, ever lament their fate, and ever execrate the hand which signed the warrant for their death. Sydney was innocent even of political crimes, and Russell suffered a punishment far exceeding his legal guilt, for the act by which he was tried had expired.

Doubtless Mr. Fox holds up to our admiration the integrity and magnanimity of Argyle, and he represents the "fine qualities" of Monmouth so as to conciliate our affection and esteem. But he has so described Argyle's invasion as not to impress us with any favourable opinion of his discretion, a quality which, upon such occasions, Mr. Fox has shown to be inseparable from virtue.

Of Monmouth Mr. Fox informs us that "he possessed qualities which, in a popular government, were far more effective than the most splendid talents *—that during the life of Charles his youthful mind was fired with ambition, and that he considered the putting of himself at the head of a party, as the means by which he was most likely to attain his object—that his declared enmity to his uncle, the Duke of York, was one of the circumstances which overpowered the obligations of filial duty

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which lay upon him to govern his subjects in their temporal concerns, according to the directions and by the authority of the laws.

The plain truth is this. An English Sovereign is no more authorised to turn a free into an arbitrary government, than to raise a Roman Catholic upon the ruins of a Protestant church. The vestiges of a change in religion may be more distinct, and the process more rapid, than those of a change in the affairs of state. But the danger in the latter case, is not, therefore, less; it may even be greater from the circumstance of gradual and silent introduction; and, when the evil is at once conspicuous, imminent, and radical, the right and even the duty of resistance are indisputable. They, at least, who controvert the foregoing positions are alike hostile to the Reformation and the Revolution.

* Page 167.

and gratitude, and seduced him into such conduct as, in any other subject might have been meritorious, but in him was doubtful and extremely culpable—that his attachment to the Protestant religion, and to the civil liberties of the country co-operated with his friendship for some of the Whigs, his admiration of their talents, and his love of their principles, in suggesting to him high schemes of ambition, of which it is difficult to discover the precise object*—that his invasion in the reign of James was ill-planned and ill-executed—that he could have no prospect of efficient aid from Scotland—that he was destitute of money—that he neither gained nor had reason to expect support from the great families—that he confided weakly in the momentary breath of popular applause—that he published a declaration, equally unsatifactory to the commonwealth-men,† the favourers of hereditary right, and the more rational advocates of monarchy—that his flexibility had degenerated into a habit,‡ which made him often follow the advice, and yield to the entreaties of persons whose character by no means entitled them to such deference—that, by the advice of Grey, to whom he was partial from long friendship, and of Ferguson, whom he never could have mistaken for an honest man, he had been persuaded to the unjustifiable step of declaring himself King—that the most guilty act of his life was lending his name to a declaration which was published at Lyme, which accused the King of being an incendiary, a murderer, and even a fratricide: and that the guilt of these atrocious calumnies is heightened, because he does not himself appear to believe them to be true." In these representations of Monmouth's character and actions, I see no traces of any attempt to recommend his real "crimes to our affection," to throw an air of "virtue over his political crimes," or to represent them as resulting so much from his "fine qualities," as from weakness in his judgment, and excess in his ambition.

At the close of some very severe remarks made upon the censures which Mr. Fox passed on the Bishops who attended Monmouth, and on the "morose and illiberal bigotry" which Mr. Fox is accused of indulging against churchmen and the church,

* Page 168. † Page 233. ‡ Page 271.

the critics of whom I have been speaking have thus written: "Infidelity," say they, "has its bigotry as well as superstition, and is as rabid and relentless."

That infidelity, as well as superstition, is accompanied by bigotry I readily admit, and the events of our own times have given us melancholy proofs, that, during the short career of its triumphs, it can be "as rabid and as relentless." But why is the general observation introduced in this place? Will the Reviewer take upon himself to justify to their full extent the political tenets of those churchmen who are the objects of Mr. Fox's indignation as an historian? Is the indignation which Mr. Fox upon one occasion expresses against such members of the Church of England so unqualified and so unrelenting, that it was impossible for him to feel and avow it without a total disbelief, and even an inveterate hatred of Christianity itself? Was it decorous or honourable in the Reviewer to throw out a general charge of this kind without attempting to support it by particular passages, bearing the most unequivocal marks of determined and incorrigible infidelity? Will the Reviewer suspect me of any predilection for infidelity and disloyalty, because, when a schoolboy, I maintained indignantly, as Mr. Fox has since done calmly, that the order of words was not accidental in a certain formulary, for which "chicane in law, and casuistry in lawn," have not yet produced such proofs as to convince me that the substance of that formulary is warranted by the constitution, or by the Scripture—because I do not class passive obedience and non-resistance * among the articles of religion, which are to re-

* I suppose that scarcely any ecclesiastic of our own days could conscientiously declare what Burnet calls a special assent to every particular of the homilies concerning obedience, and against wilful rebellion; and even upon the main of the doctrine that is taught in them there is a general, though tacit consent to allow such difference of opinion, as it were not very easy, nor indeed very prudent, to limit by a series of definite propositions. In veneration for the Gospel, in submission to the laws, and fidelity to the throne, the scholars of Locke and Hoadley have little to fear from comparison with the admirers of Filmer and Atterbury. For my part I hold myself, as a Christian, bound to obey the laws of my country, and dutifully to serve, honour, and submit

gulate my belief, or the political maxims which are to guide my conduct—because I have long been enamoured of those princi-

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to the powers by which those laws are enacted and administered. But I also hold that, as a Christian, I am authorised to venerate and to maintain the civil rights of my countrymen. I therefore shall always lament the indiscretion of ecclesiastics, when they contend for opinions, which in their legitimate and practical consequences, lead to the extravagancies of Rousseau, where he tells us, that "Le Christianisme ne prêche que servitude et dépendance. Son esprit est trop favorable à la tyrannie pour qu' elle n'en profite pas toujours. Les vrais Chretiens sont fait pour etre esclaves."—Lettre a M. de Beaumont, p. 198. Anxious for the honour of my religion, for the comfort and instruction of my fellow Christians, and for the happiness of my fellow subjects, I shall always declare in the words of an eloquent prelate, "That grandeur and elevation of mind, that sublimity of sentiment, that conscious dignity of our nature, redeemed at so high a price, which true religion keeps alive; which Holy Scriptures dictates; and which the Spirit of the Lord inspires, will be ever pushing us on to the attainment and preservation of those civil rights which we have been taught by reason to know are ours; and which we have been made to feel by experience, are, of all ours, the most indispensible to human happiness."—Warburton's Alliance, page 258.

Among the apologies which Mr. Hume adduces for the prejudices and faults of the Stuarts, and some of which it were unjust to reject indiscriminately and totally, he says, "the flattery of courtiers also blinded them, and above all that of the clergy, who from several passages of the Scriptures, and those wrested too, had erected a regular and avowed system of tyranny and despotic power."—Essay on the Protestant Succession. I know not the value which other men may set upon the opinion of Mr. Hume, yet I see with great satisfaction that he throws the blame not upon religion, but upon the teachers of it; and with great satisfaction, also, have I noticed the incidental and indirect testimony which other unbelievers have borne to the political usefulness, or at least harmlessness of the Scriptures. If they had contained passages which by a fair construction were favourable to the cause of despotism, what occasion was there for theologians to wrest any texts? and that texts were so wrested was the opinion not only of Mr. Hume, but of many learned and sincere believers. But if it be said that the Scriptures in the real and obvious sense of words countenanced despotic power, then surely we have stronger reason for admitting the justness of Mr. Hume's remark, that "there never was a grosser contradiction than appears

ples of justice, benevolence, and equality, which form the true creed of a party * espoused by me in my youth, and after expe-

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between the doctrine of passive obedience, and the resistance which the advocates of that doctrine made to James the Second at the Revolution."—See Hume's Essay on the Parties of Great Britain.

Upon this supposition, I must acknowledge the inconsistency, while I honour the sincerity and the courage of the dignified ecclesiastics. But rejecting the supposition itself, I would make many allowances even for their errors, and as to the great bulk of the clergy I should with some qualification assent to the excuse which a very ingenious prelate has made for them. "It is no wonder the clergy should be most solicitous about what was their proper care; what they best understood; and what was then deemed to be in most danger: that if they knew little of the nature and rights of society, they might be well excused, as they had been misled by a set of court divines, who had betrayed and sacrificed the principles of the Reformers to the practices of James and Charles the First's ministers; and as they had never been taught by experience, the blessings of a free government, regulated upon true principles."—Warburton's Sermon on the Suppression of the Rebellion.

For a bias in the minds of ecclesiastics towards such a degree of regal power as might eventually endanger the blessings of a free government, I should sometimes be disposed to account, not from servility, not from arrogance, not from a tyrannic temper, but from that intellectual weakness against which even the experience of their countrymen since the Revolution has not been sufficient to preserve every individual, whether in a clerical profession, or indeed out of it. I should not upon every occasion be incensed against unthinking persons, when I was told by them, that the Scriptures are rather favourable to absolute monarchy, because I have seen some approaches to that tenet in writers whose talents, literary attainments, and virtues I ought to revere.

Even the acute and sagacious author of the Fragment upon Government confesses, that in his youth, and during his residence in an English university, he had imbibed opinions similar to those which were entertained by many ecclesiastics in the reign of James. "I saw," he says, "strong countenance lent in the sacred writings to monarchic governments, and none to any other. I saw passive obedience stampt with the seal of the christian virtues of humility and self-denial."—Page 47. Such are the words of Mr. B. where he gives "a short sketch of the

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* Fox's History, p. 267.

rience of its worth and usefulness, respected by me even in manhood and old age—because, with Dr. Paley,* I believe a religious

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wanderings of a raw, but well-intentioned mind in its researches after moral truth." Perhaps he was then so content with looking to the "genius of the place he dwelt in, the authority of the state, and the voice of the church in her solemn service," that he did not very often, nor very carefully consult his Bible, or, when he did consult it, his prejudices gave to his mind in the interpretation of it a bias which he afterwards could not resist, when the prejudices themselves had been corrected and renounced. Whatsoever may be the result of his subsequent inquiries, goodness of intention, I am sure, will never forsake him; and as his knowledge is now more extensive, and his judgment more mature, I should gladly submit to his consideration my reasons for believing him mistaken, when he supposed the doctrine of passive obedience to be warranted by the Scriptures.

"They lent," says he, "strong countenance to monarchic government, and none to any other." Be it so. But do they, also, countenance the abuses of that government?

From the rise of the Jewish monarchy under Saul, and after the separation of the tribes into the governments of Judah and Israel, the sacred writers lived under kings—they were surrounded by kings in neighbouring states—they were subject to kings under the Babylonian and Assyrian captivities. But would Mr. B. refuse to the Eastern style of the sacred writers the privilege of using that lofty phraseology which we find in Homer, where kings are addressed, as Διοτρεφεῖς, and Διογενεῖς? Has he not often smiled at the inferences in favour of absolute monarchy, drawn from the well-known passage,

"εἷς κοίρανος ἔστω,
Εἷς βασιλεύς!"

Does he imagine that the poet meant to condemn aristocracies, or democracies, because he speaks respectfully of that regal form of government with which alone he, in all probability, was acquainted? Let Mr. B. reason in the same fair and plain way about the Jewish writers, and when the king is called "the Lord's anointed," let him call to mind the Jewish ceremony of unction, and impute to the phrase no larger meaning than it conveyed to a Jewish ear. It was the sign of an office, to which great respect was due among the Jews, and indeed among every other people, where the title was used. But as to the modern notions of inviolability and sanctity, however countenanced they may be by the laws of modern states, they imply far more than

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* Chap. 10.

establishment to be "no part of Christianity, but only the means of inculcating it"—because I hold civil and religious liberty to

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any critic will assign to the phrase we are considering, in the sacred writers.

Do not the historical books record, and upon many occasions reprobate the crimes of the Jewish kings, both in their personal and regal characters? In their didactic writings, such as the Psalms and the Proverbs, is any praise bestowed upon the bad actions of monarchs? Are not frequent and earnest exhortations to good actions set before them? Do not the prophetic writings abound with bold expostulations addressed to wicked kings—with severe reproaches—with terrible denunciations of the vengeance which their enormities would bring down upon them and their subjects? Let us turn to the apocryphal books. Is there any mark of adulation in the answer made by a young man, and reported to a king? "Wine is wicked, women are wicked, kings are wicked, all the children of men are wicked. As for the truth, it endureth, and is always strong."—1 Esdras, ch. iv. How can the pernicious effects of evil counsellors upon the measures of a government, or the happiness of a people, be more luminously described than in the book of Esther, where ministers are mentioned as "beguiling with their lewd disposition the innocency and goodness of princes, causing by fair speech many that are in authority to be partakers of innocent blood, and enwrapping them in remediless calamities?"—Ch. 16. Do not the books of Maccabees contain precepts and examples which recommend to our esteem the efforts of patriotism engaged in vigorous resistance to oppressors? What do we read in the book of Wisdom? "Great men and judges and potentates shall be honoured—yet is there none of them greater than he that feareth the Lord." "The Lord hath cast down the throne of proud princes, and set up the meek in their stead."—Ch. 10. "All, except David, and Ezekias, and Josias, were defective: for they forsook the law of the Most High, even the kings of Juda failed."—Ch. 49.

Now the sacred historian did not assume the office of an apologist when he represented David as guilty of adultery and murder, and sinking under the terrors of an awakened conscience, after Nathan had upbraided him with his aggravated wickedness—the sacred historian did not lend any "strong countenance" to despotism, when he described David as gaining, and deserving to gain, the throne by successful opposition to a sovereign who was not longer worthy to reign—the sacred historian did not hold the language of flattery, but of justice, when he spoke of David as a man "after God's own heart;" for he applied the term, as scholars now apply it, to some eminently meritorious actions

rest on the same ground of general utility, and to be interwoven in the essential and vital principles, of the English constitution—

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of David in his regal capacity. In profane history we meet with scattered instances where unwelcome truths were conveyed to the ears of kings by the priestess of an oracle, by a faithful counsellor, by a personal friend, or by a philosophic churl. But among the Jews we find a succession of men who thought themselves privileged by their prophetic office to advise, to rebuke, and to threaten their lawful sovereign, and who seem also to have availed themselves of the privilege frequently, boldly, and at the hazard of their liberty or their lives, from the caprice of profligates or the vengeance of tyrants. With equal intrepidity they pointed their indignation against the deceiver and the deceived—against the "ancient and honourable heads" of a nation, "who caused it to err—against the seers," who "ran when the Lord had not sent them," "prophecied smooth things when he had not spoken to them," "and shouted, peace, peace, when there was no peace" —against the priests "who strengthened the hands of the wicked," and perhaps boasted, "we are wise, and the law of the Lord is with us"—against "the people who, when the prophets prophecied falsely, and the priests joined hands with them, loved to have it so."

Whatsoever may be the attachment of Christian potentates to the authority of national churches, it does not appear that prelates, or chaplains, or confessors, were allowed to reprove their royal masters publicly; and when we find the Scotch Presbyterians alledging the precedents they had from the Jewish prophets for inveighing against the vices of their own monarchs, our understandings spurn at the fallacy of their logic, our sense of propriety revolts at the coarseness of their manners, and we impute even their well-founded reproaches, not to the magnanimity of virtue, but the audacity of fanaticism.

In regard to passages in the New Testament, quoted as they are, not from the gospels, for they are nearly silent on the subject, but from the writings of Saint Peter and Paul, I am sure that so acute a reader as Mr. B. would acquit them of the mischievous tendency which has been imputed to them, if his meritorious labours in other researches were for a time suspended, while he examined the defence and explanations of those passages, for which the Christian world is indebted to Sydney, to Locke, to Hoadley, and other writers not eminently favourable to the cause of despotism and non-resistance. To the general assertion of Mr. B. I would dispassionately and respectfully oppose the foregoing detail. If that excellent man had thrown out any strictures upon doctrines merely speculative, and as such

because while I entertain the most profound respect for the talents and virtues of a Laud and a Tillotson, I prefer the mo-

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controverted among Christian polemics, I should have left it with other men to confute him. But when we are inquiring, "non disputandi causa, sed ita vivendi" (Cicero pro Muræna)—when the question relates to a point of fact closely connected with morals—when we would settle whether the sacred writings do or do not inculcate tenets most injurious to society, I cannot look with indifference upon what I believe to be the erroneous decision of so profound a thinker, and so honest a man.

As to the virtues of humility and self-denial, I shall not upon this occasion fly for shelter to the distinction which Montesquieu has made between "counsels and laws."—Book xxiv. chap 6. In the obvious and familiar sense of the words, humility and self-denial are virtues, which in a state of moral discipline we are often required to practise as men and as subjects. Experience shows them to be connected with the peace of families, neighbourhoods, and governments. Philosophy will allow them to be parts of prudence, temperance, decorum, and submission to those laws upon which the existence of society must depend. They have indeed their boundaries; and these boundaries will, by a discreet and impartial inquirer, be discovered in the well understood principle of utility, for which Mr. B. himself strenuously contends, and upon which he states some political limitations in ch. 1, sect 43, and ch. 4, sect. 39, 40, and 41. "Utility," says Mr. B. "is that standard to which men in general refer a law or institution in judging of its title to approbation or disapprobation." That principle enables us to understand whence it is that, although "force is always on the side of the governed, and governors have nothing to support them but opinion, yet it is an opinion of an interest most powerful and constant," for men are led to resign their own sentiments and passions to those of their rulers by a sense of the public advantage which is reaped from government, together with a persuasion that the particular government which is established is equally advantageous with any other that could be easily settled."—Hume's Essay on the First Principles of Government. In that principle we see a reason why governments, "in proportion as the habit of obedience" (which, according to Mr. B. constitutes their power) "is more perfect, recede from, and in proportion as it is less perfect approach to a state of nature."—Fragment on Government, book i. chap. 12. Upon that principle, rightly explained and rightly applied, I should maintain with Montesquieu, that "citizens of the Christian profession, being infinitely enlightened with respect to the various duties of life,

deration of the one to the rashness of the other—because in the exoteric and esoteric doctrines of the English Church I have met

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and having the warmest zeal to fulfil them, must be perfectly sensible of the rights of natural defence—that the more they believe themselves indebted to religion, the more they would think due to their country—that the principles of Christianity, deeply engraven upon the heart, would be infinitely more powerful than the false honour of monarchies, than the humane virtues of republics, or the servile fear of despotic states."—Book xxiv. chap. 6.

I once heard it remarked, that if the records of the crimes committed by monarchs are to be considered as satires upon the dignity of the monarchial office, no records are more full nor any satires more poignant than those which are read in the historical books of the Old Testament. It should be remembered, however, that of the contemporary kings we have scanty and obscure accounts; and therefore the comparisons which we institute between the kings of Israel and Judah and other sovereigns of the same ages, must be grounded on the mere probability, that, as the people were more ignorant and ferocious, the rulers partook of the same odious character. But without giving an unqualified assent to the above-mentioned remark, I see in it truth enough to show, that no improper "countenance is lent" to worthless kings, in a book which frequently relates their faults, sometimes condemns them, but never attempts (as a late philosophical historian has done in the reigns of English kings) to vindicate, or even extenuate them. It must be owned, that when we read the actions of the Israelitish and Jewish monarchs, we do not very often find them entitled to moral approbation; and the same may be said of the impression made upon our minds by the histories of many other potentates, both ancient and modern. But would the Jews have been justified in revolting from every bad king, upon every strong provocation from his evil measures? I broadly and promptly say, they would not; and for this plain reason, because the consequences of frequent revolts would have been more pernicious than the consequence of general submission. Now as experience shows that in all other governments similar consequences are nearly at all times to be apprehended, religion surely goes hand in hand with sound policy, when it generally and forcibly inculcates the duty of obedience—a duty which results, as do all other duties, after our notions of obligation, merit, and moral approbation have been analysed into their elements, from what upon the whole is our real interest, and the violation of which is productive of more misery than happiness, or, (as Mr. B. would say,) "more pain

with no rule by which I am pledged to entertain any hatred whatsoever to Dissenters, whether Protestant or Catholic—be-

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than pleasure," not only by the positive appointments of political societies, but by the established and known order of those causes which pervade the moral constitution of the world.

My opinion is, that there is not the smallest difference between religion and philosophy in the tendency of the moral principles which they inculcate, so far as those principles promote the public welfare of communities. Both are favourable to good order, favourable to obedience, favourable to the habit of honouring the king, as indeed civilization, as usage, as law, as the love of respect when due to ourselves, and the unperverted sentiments of the human heart, also, teach us to honour him. Both, likewise, are favourable to diligence, prudence, temperance, decorum, justice, self-command, reasonable self-love, benevolence, and all those private and personal virtues which promote human happiness more constantly, and upon the whole more largely even than public virtues, which silently prepare and discipline the human mind for great exertion where the ends to which exertion is directed are visibly good, and which restrain our restless and irregular passions from disturbing society under the pretext, for such we experimentally know it often to be, of reform or improvement. Both, in effect, though with different modes of phraseology, represent princes as "ministers to us for good," as intended for "a terror to evil doers," as "decreeing justice," as subject to those laws of the moral world by which authority, if well employed, must be strengthened, and if ill employed, may be weakened as rulers who ought to be "able men, men of truth," "men who hate covetousness, men who should do no unrighteousness in judgment, who should not respect the person of the poor, nor honour the person of the mighty," men in whom it is "an abomination to commit wickedness," men whom "mercy and truth preserve," and whose "throne is upholden by mercy and established by righteousness," men who, when they will "no more be admonished" are inferior to a poor and wise child," men who, when their eyes and hearts are for the shedding of innocent blood, for oppression and for violence," will not always be permitted "to reign, because they clothe themselves in cedar," men who, when they "take the bad counsel of the young, reject the sound advice of the old, answer the people roughly, and say they will add to their burdens, and not ease them," are in danger of incurring what Rehoboam experienced when the tribes revolted against him, and chose themselves a king. Whether, indeed, we refer the punishments of wicked rulers to an ordinary or an extraordinary providence—whether

cause "as much as lieth in me I would live," and exhort others to live, "peaceably with" the Lutheran, Greek, Roman, and

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we look upon them as events flowing from the same causes, which every where more or less govern the concerns of men, or as divine judgments, they are equally conformable to our sense of right and wrong, and are equally to be considered as proofs of the baleful consequences which bad policy and bad morals tend to produce in the condition of bad kings. The principle of utility then is virtually recognised in sacred history, though the term is found only in philosophical writings. But let us remember that the same principle puts us in mind "to be subject to principalities and powers, to obey magistrates, to be afraid of the powers, and to render tribute to whom tribute is due, custom to whom custom, fear to whom fear, and honour to whom honour."

The gospels, as I have observed, are nearly silent upon subjects purely political, and in the way of direct precept they lend little countenance to the advocates or to the opponents of absolute power. He whose kingdom was not of this world made no opposition to Cæsar's government, or Cæsar's representative in Judæa. But even Milton, in defending the death of Charles the First upon the scaffold, says a learned and sagacious biographer, "can cite from the sacred writings of the Christians only two or three passages, which prove nothing more than that the blessed Jesus did not assign to monarchs all the attributes which were given to them by the adulation of the world, or feel for wicked sovereigns more respect than he entertained for wicked men."—Dr. Symmons's Life of Milton, page 252.

As to extreme cases, the Scriptures, then, I grant, do not lay down any general rules which authorise resistance. But the same wariness is preserved in the more deliberate and important exercises of the human mind, in historical investigations of causes and effects, in the laws of civilized nations, and in all those systems of philosophy which are founded upon experience, appeal to the sober judgment of mankind, and are adapted to the practical concerns either of private or public life. The habit of contemplating such cases may generate a predilection for political theories, compounded of assumptions, conjectures, and deductions from facts which have been arbitrarily selected for purposes of illustration or proof, and severed from other facts leading to other deductions. But a strong presumption against the truth of those theories may always be found in their want of conformity to the real situation of man, to his complex nature, and to his various and mutually dependent interests in a state of society.

Genevan churches, and all other Christian societies—or, finally, because with the light of natural religion, and in the spirit of revealed, I think it my duty to be "kindly affectioned towards all Jews, Turks, infidels," schismatics, "and heretics," as belonging to "one" great "fold under" the care of "one" good "shepherd?" How does the sacred and indispensable duty of doing good, especially unto those of the household of "faith," absolve me from the obligation to do good, if it be possible, to all other men? Are they not endowed, like myself, with rational faculties, capable of physical happiness and social union, and placed, or at least believed by me to be placed in a state of discipline, as subjects of reward or punishment in a life to come? Why, then, should I "judge them," or "set them at nought," or, by my intolerance, "throw stumbling-blocks in their way" to the adoption of that religion which I have embraced as true? "To their own master," as they are "fully persuaded in their own mind, every one of them standeth or falleth. Yea," I trust, "they will be holden up;" for, by methods and for purposes quite unknown to me, the moral Governor of the universe "is able to make them stand."*—Romans, ch. 14.

I lament the errors of the advocates for non-resistance, when they seem to me to misinterpret either the examples recorded or the admonitions enforced in holy writ. Let us, however, do justice not merely to the general rectitude of their intentions, but to the occasional validity of their reasonings—let us acknowledge that the maxims of sages, and the decisions of lawyers, to which they occasionally appeal, evince the previous existence of a sentiment for the long continuance and wide extent of which we must be unable to account, if under no aspect whatsoever, and in no degree whatsoever, it be warranted by experience. Let us remember, that while they insist upon the decisions of fathers, the decrees of councils, and, as they believed, the commands of the Deity himself, they again and again argue upon the principle of utility, they in effect represent our interest as inseparable from our duty, and hold up, not only the moral turpitude of rebellion to our abhorrence, but the physical mischiefs of it to our fears:

"Naturam expellas furca licet, usque recurret."

* I am glad that Jortin reasoned on the same principles with myself. "Them who are without God judges. He best knoweth

Anxious I shall never be to defend myself against such charges as infidelity or disloyalty, founded upon the approbation and

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" how to deal with the Pagan world in general, and in particular with those Pagans who were so far estranged from Him as to fall into the Epicurean impiety. To his righteous judgment let us leave them."—Jortin in his sixth Dissertation.

Clemens Alexandrinus supposes, that the law of nature, as discoverable by philosophy, would save a heathen; and the principle on which he founds his reasoning, extends, surely, to all persons, who, having formed their moral and religious opinions honestly and seriously, act up to them, when formed, sincerely and steadily. "*οὐ μόνον τοίνυν ὁ πιστὸς, ἀλλὰ καὶ ὁ ἐθνικὸς δικαιότατα κρίνεται· ἐπειδὴ γὰρ ᾔδει ὁ Θεὸς, ἅτε προγνώστης ὢν, μὴ πιστεύσοντα τοῦτον, οὐδὲν ἧττον, ὅπως τὴν γε καθ' ἑαυτὸν ἂν ἀδέξηται τελείωσιν, ἔδωκε μὲν φιλοσοφίαν αὐτῷ, ἀλλὰ πρὸ τῆς πίστεως.*—Stromat. lib. vi. p. 795.

Having in page 231 mentioned with approbation the arguments which Pistorius has employed on the ends of future punishments, I am solicitous to avert from him and from myself the imputation of that singularity, which upon religious subjects, is often thought to imply rashness. An opinion may not be the more probable, nor perhaps the more authoritative, because it was maintained by a father of the Christian Church. But if persons among them of acknowledged ability and piety have thought that punishment as administered by the moral Governor of the Universe is intended, among other purposes, for the correction of the suffering offender, surely a believer in our own days may properly appeal to the testimony of such writers and may justly contend that, upon the tenets which he holds in common with them, no objection ought to be raised against the sincerity of his own assent to the credibility of revelation, or his own reverence for the attributes of the Deity. Now I would refer you to vol. i. p. 352 of Jortin's remarks upon Ecclesiastical History, where you will find an introductory distinction made by Aristotle, between *τιμωρία* and *κόλασις*—"*διαφέρει δὲ τιμωρία καὶ κολασις· ἡ μὲν γὰρ κόλασις τοῦ πάσχοντος ἕνεκά ἐστιν ἡ δὲ τιμωρία τοῦ ποιοῦντος.*" I would add (as Jortin does not refer) that the foregoing passage occurs in lib. i. cap. 10, of the Rhetorics, in the Cambridge octavo edition, of 1728. In conformity to that distinction Aristotle elsewhere says, "*ἡ γὰρ τιμωρία παύει τῆς ὀργῆς, ἡδονὴν ἀντὶ τῆς λύπης ἐμποιοῦσα.*"—Ethic. Nicomed. lib. iv. cap. 5. "*μηνύουσι δὲ καὶ αἱ κολάσεις γινόμεναι διὰ τούτων, ἰατρεῖαι γὰρ τινές εἰσιν.*" For *ἀκολασία*, and *κεκόλασθαι*, see lib. iii. cap. 12. But we are chiefly interested in the passages which Jortin quotes from page 895 of lib. vii.

avowal of such tenets as I have just now stated. But I am not equally indifferent about the insulted memory of a most beloved and respected friend, and in justice to him I will produce from his History in detail every passage in which he directly or indirectly adverts to religion.

In page 15, when Mr. Fox is considering the general effect produced upon the minds of men by the execution of Charles, he says, "it cannot be doubted but that the opportunity given to Charles for displaying his firmness and piety has created more respect for his memory than it would otherwise have obtained." Does Mr. Fox here accuse Charles of weakness or of insincerity in his religious faith? Does he not grant that the piety of the King, together with his firmness, operated so powerfully upon the minds of men as to counteract the effects which otherwise would have been produced by his imperfections, and what our historian must have believed to be, his crimes?

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and page 764 of Clemens Alexandrinus, in Stromat. (Paris edition) and in his reference to page 794 and the Notes. Clem. Alex. does not, in his terms, observe the distinction laid down by Aristotle, between κόλασις and τιμωρία, as may be seen in page 795. But it is apparent that he believed all future punishments to be corrective to the sufferer, and preparatory for the gradual attainment of greater or less degrees of happiness. Upon those degrees you may consult the Note in page 794, and the text in pages 865, 866. Jortin, on the question from page 895 of the Stromat. adds, "Origen was of the same opinion, and perhaps carried it somewhat farther." As Jortin has not here employed either reference or quotation, I shall point out the places where Origen's sentiments may be found: see vol. i. pages 588 and 677 of the Paris edition published in 1733; vol. iii. pages 267, 444; vol. iv. pages 16, 296, 560, 575, 640. The learned reader would do well to consult paragraphs 10, 16, 17, 23, 24, 26 of Huet's Origeniana.

Let me observe, that the purgation by air, water, and fire, which Virgil mentions in vv. 741, 2, 3 of the sixth Æneid, and which was to continue for a thousand years, seems confined to the souls, Quibus altera fato Corpora debentur. "De Heroum, Philosophorum, et bonorum animabus quæ Plato addit, Poeta tacet, nec adjicit quid de iis fiat, quibus tam alte labes ista insidet, ut elui nequeat, qui tamen plures numero esse debent. Scilicet hi jam ante in Tartarum erant detrusi."—See Excurs. 13, of Heyne upon the sixth Æneid.

In page 16 we are told that "whatever might be the advantage gained to the cause of liberty by the terror of the example operating upon the minds of princes, such advantage is far outweighed by the zeal which admiration for virtue, and pity for sufferings, the best passions of the human heart, have excited in favour of the royal cause." Did not the piety of Charles hold a distinguished rank among those virtues which at this very hour increase our pity for his sufferings, and which among all considerate men of all succeeding ages will soften the odium which has fallen upon the royal cause?

When Mr. Fox speaks of the University of Oxford, as passing that famous decree, which "condemned formally, as impious and heretical propositions, every principle upon which the constitution of this or any other free country can maintain itself, and stigmatised such principles as contrary to the holy scriptures, to the decrees of councils, to the writings of the fathers, and the faith and profession of the primitive church;" he adds,* such is the manner in which churchmen will abuse, when it suits their policy, the holy name of that religion whose first precept is to love one another, for the purpose of teaching us to hate our neighbours with more than ordinary rancour." Mr. Fox and I may be mistaken in thinking those principles essentially necessary to the constitution of every free country, and in believing that churchmen, when it suited their policy, have sometimes abused the name of religion. But we are not mistaken, when we call that name holy—when we call the precept, which it gives us to love one another, its first and great moral commandment; or when we think it a violation of that commandment to teach men to "hate their neighbours with more than ordinary rancour."

In page 57 he considers it "not as a judicious and honest use, but a perversion of scripture, if men had so applauded the declaration which was ready for the press at the time of Charles the Second's death, as to pronounce it an additional proof of the maxim

"nunquam libertas gratior extat
Quam sub rege pio.

What is this, as connected with Mr. Fox's views of Charles's

* Page 51.

conduct, but in effect to say, that without the perversion of scripture, true liberty and true piety could not be represented, upon scriptural grounds, as likely to receive any solid benefit from the declaration of a prodigal and profligate monarch, who had been neither humbled by adversity nor soothed by prosperity —who was equally ready to promise where he could deceive, and to threaten where he could intimidate—who had shown himself capable of abandoning his love of voluptuous ease, and the shifts of temporising accommodation, when he met with opportunities for the bolder assumption and the sterner exercise of regal power—who had endeavoured by force of arms to give effect to his illegal and insidious proclamation of indulgence in religion, and then, not from virtuous remorse, but abject fear, had broken the seal of the deed with his own hands—who by practising upon popular credulity had brought an odium upon popular principles in order to undermine and ultimately subvert popular rights—who had deluded and persecuted Protestant Dissenters in England, and bound himself by a solemn pledge to accomplish the downfal of the Established Church—who in Scotland let loose the fury of Episcopalians against Covenanters, while he kept in reserve a host of Papists who at a proper season were to crush Episcopalians—who had shut up the Exchequer, seized upon charters, violated his engagements with Parliament, and squandered upon minions and mistresses the grants which had been made him for the protection of his subjects—who had spared a Lauderdale, skreened a Danby, disgraced the faithful Clarendon, ruined the patriotic De Witt, sacrificed a Russel, a Sydney, and a Stafford, to the rigours of a sentence which he knew to be unjust, betrayed Holland, deserted Spain, and for the basest purposes of foreign and domestic policy sold himself again and again as a groveling, shuffling, intriguing pensioner to the bigoted, arrogant and ambitious Sovereign of France. Congratulations and encomiums even upon such a Prince may be read in addresses from short-sighted academics and low-minded courtiers. But the vindication of such a Prince, as Mr. Fox thought, is not to be found in the genuine spirit or letter of the Scriptures. Is it the custom of infidels to bear such testimony to the consistency of those Scriptures with the best rules of government, and their usefulness even in the temporal concerns of mankind? Can

it be the duty of Christian teachers to extract their praises of such a man as Charles, or their defence of such a governor, from the hallowed oracles of God? Reasons, I grant, they had for dreading the Puritans whom Charles was known to detest, and the Papists whom he was known to favour. But was there not equal reason to look with some distrust upon a Prince who openly encouraged those unrestrained vices and those undisguised opinions by which every truth of religion and every principle of morality were endangered?

"Quis Dardana ab ortu
Mænia mutato tantum jam tempore credat?
Luxus, et insanis nutrita ignavia lustris,
Consumptusque pudor peccando, unusque relictus
Divitiis probrosus honor lacerabat hiantem
Desidia populum, ac resolutam legibus urbem.
Nec vitiis deerant vires. Malefacta veneno
Assyrio manibus vestris, medioque dierum
Regales epulæ, atque ortu convivia solis
Deprensa, et nulla macula non illita vita.
Tum populo sævi patres, plebesque senatus
Invidia læta, et collidens dissona corda."*

In page 96 Mr. Fox praises Richard Baxter as a pious and a learned man. Who will deny it?

In page 201 he tells us that "the religious concerns in which Argyle seems to have been very serious and sincere, engaged much of his thoughts on the day of execution. But his religion," Mr. Fox adds, "was of that genuine kind which, by representing the performance of our duties to our neighbour as the most acceptable service to God, strengthens all the charities of social life." If the most orthodox man living were to describe and to praise the Christian religion as a rule of life, could he describe it more accurately, or praise it more ardently, than Mr. Fox has done in the words above quoted? Mr. Fox, we may allow, was delighted with the political principles and political conduct of Argyle. But let us remember that those principles and that con-

* Silius Italicus, lib. xi. l. 30.

duct are not exclusively the objects of Mr. Fox's commendation. He praises Argyle for being pious. But he also praises Christianity for instructing Argyle in that kind of piety which carried him onward from the love of God to the love of his neighbour.

In page 204 we read, "Let him be weighed ever so scrupulously, and in the nicest scales, he will not be found, in a single instance, wanting in the charity of a Christian, the firmness and benevolence of a patriot, the integrity and fidelity of a man of honour." I believe that, in the enumeration of a man's virtues, infidel writers do not tell us, so earnestly as Mr. Fox has told us, that with the firmness and benevolence of a patriot, and the integrity and fidelity of a man of honour, their hero united the charity of a Christian. Surely Mr. Fox has upon this occasion extolled a Christian virtue in terms strictly Christian.

With evident marks of sympathy and approbation Mr. Fox represents Argyle "as desiring Mr. Annand and Mr. Chartris to pray for him, as praying for himself with much fervour and devotion, as offering his prayers to God for the three kingdoms of England, Scotland, and Ireland, as asking pardon for his own failings both of God and man, as praying that there never may be wanting one of the royal family to support the Protestant religion, and that if any had swerved from the true faith, God would turn their hearts." When Argyle a third time addressed the people, and said, "I die not only a Protestant, but with a hearty hatred of Popery, prelacy, and all superstition whatsoever," Mr. Fox does not dissemble his wish that these last expressions "had not been uttered, as there appears certainly something of violence in them unsuited to the general tenor of his language," and of that general tenor Mr. Fox seems to have approved, because it was adapted to the situation of a dying man. Thus far Mr. Fox commends the Christian piety of Argyle, as displayed at a moment when it peculiarly became Argyle to be pious; and he condemns only that excess by which his piety was made inconsistent with Christian charity. When Mr. Fox relates the preparation of Monmouth for execution, he faithfully and solicitously brings forward many circumstances by which the devotion of Monmouth most strongly recommends him to our compassion. "Monmouth," says he, "was very sincere in his

religious professions, and it is probable that a great portion of this sad day was passed in devotion and religious discourse with the two prelates, who had been sent by his Majesty to assist him in his spiritual concerns." Upon the scaffold, Monmouth, he tells us, "was sure he was going to everlasting happiness, and considered the serenity of his mind, in his present circumstances, as a certain earnest of the favour of his Creator. He maintained that his present courage was owing to the consciousness that God had forgiven him his past transgressions, of all which he generally repented with all his soul." Why did Mr. Fox enter into this detail? I perhaps shall be told that he meant to place in a more odious point of view the conduct of those persons who in the prison and upon the scaffold "seem to have repeatedly teazed him with controversy, and to have been far more solicitous to make him profess what they deemed the true creed of the Church of England, than to soften or console his sorrows, and to help him to that composure of mind so necessary for his situation."* So far as this was Mr. Fox's meaning, he in my opinion meant well; for, if the Bishops had at such a time abstained from controversial subjects—if they had been more anxious "to console the sorrows of Monmouth" than "to make him profess what they deemed the true creed of the Church of England"—if they had drawn from the Scriptures what the Scriptures would have afforded them, other more plain and more efficacious topics "to help him to that composure of mind so necessary for his situation"—they would have acted more conformably to the spirit of their religion, the holiness of their functions, and the honour of their church. But Mr. Fox meant something more. He meant to do justice to the Christian sincerity and piety of Monmouth. He gives not the slightest hint that the faith or the devotion of Monmouth was the result of weakness or superstition. He describes them as powerful enough to afford Monmouth that consolation which he sought in vain from his spiritual advisers. Even for their infirmities he apologizes. He allows "their general uprightness and sincerity as Church of England men." He ascribes their conduct, "not to motives of "servile compliance, but to an intemperate and party zeal for

* Page 263.

the honour of their church." For the excess of that very zeal he finds some excuse "in the general spirit of the times, in which monarchy was regarded, not as a human, but a divine institution, and passive obedience and non-resistance were inculcated, not as political maxims, but as articles of religion."*

Where a writer speaks thus seriously of the effects which serious things produce upon the human mind, at a season the most serious, is it fair to accuse him of that "rabid and relentless bigotry," which is sometimes chargeable upon the advocates of infidelity? I challenge any enlightened and consistent Christian to read the foregoing quotations from Mr. Fox's History, and then, with his hand upon his heart, to tell me whether he should have expected to find passages, conceived in such a spirit, and expressed in such terms, from the pen of Mr. Voltaire, Mr. Gibbon, or Mr. Hume?

In order to show that Mr. Fox has neither directly nor indirectly attacked religion, whether natural or revealed, and thus to make the defence of his History against the charge of infidelity complete, I shall here examine every passage in which the word "superstition" occurs.

The activity of the Whigs in persecuting the Popish Plot is represented by Mr. Fox as "the grand engine of their power." "When that failed," says he, "they were soon overpowered by the united forces of bigotry and corruption. They were hated by a great part of the nation, not for their crimes, but for their virtues. To be above corruption is always odious to the corrupt, and to entertain more enlarged and juster notions of philosophy and government, is often a cause of alarm to the narrow-minded and superstitious."† From the last sentence, whether considered in the light of a general proposition, or in its particular application to the conduct of the Whigs in the Exclusion Bill, no inference can be fairly drawn to the prejudice of Mr. Fox. If the Whigs had not "entertained more enlarged and juster notions of philosophy and government" than their opponents, the Exclusion Bill would not have been carried; and if those opponents had not been narrow-minded, and some of them, in their attachment to the religious opinions of James, even superstitious, a

* Page 264. † Page 94.

measure, which at the moment was thought favourable to the cause of Protestantism, must have failed. It is not, however, certain that Mr. Fox meant to apply the word superstitious to the religious tenets of any persons who resisted the Exclusion Bill. He might intend to speak only of the effects produced by superstitious veneration, i. e. a blind and abject veneration for monarchy, when the Tories invidiously insisted upon "the confusion, greatly exaggerated, in the times of the Commonwealth, and accused every lover of law and liberty of designs to revive the tragical scene which had closed the life of the first Charles."

In speaking of the Bill for the preservation of the King's person, and the solicitude then felt for the Church of England, Mr. Fox mentions "a special proviso being added, 'that the asserting and maintaining by any writing, printing, or any other speaking, the doctrine, discipline, divine worship, or government of the Church of England as it is now by law established, against Popery or any other different and dissenting opinions, is not intended, and shall not be interpreted or construed to be any offence within the words or meaning of this act.'"* He then remarks, that "only such attacks upon Popery as were favourable to the doctrine and discipline of the Church of England were protected by this proviso, and consequently that, if there were any real occasion for such a guard, all Protestant Dissenters who should write or speak against the Roman superstition were wholly unprotected by it." Here Mr. Fox does not, in his own character, charge superstition even on the Church of Rome. But the Protestant Dissenters, it is well known, were equally zealous with the members of the English establishment, in urging that charge, and Mr. Fox merely uses the word which they would themselves have used, without expressing approbation or disapprobation.

When Sir Patrick Hume was concealed in the family burying place, "the means of sustaining life were brought to him by his daughter, a girl of fifteen years of age, whose duty and affection furnished her with courage to brave the terrors, as well superstitious as real, to which she was necessarily exposed in an intercourse of this nature."† Surely the dread which a young lady

* Page 148. † Page 172.

of fifteen felt of ghosts, when she was attending her father in the burying-place of her family, may, in the present state of opinion, be called superstitious, without any imputation upon the faith of those who apply that term to that dread.

Thus far I see not the slightest appearance of levity or profaneness, where the word superstition occurs, in the three first chapters of Mr. Fox's History; and I have quoted every passage largely, for the purpose of showing by the context what was, and what was not, the meaning of Mr. Fox when he employed that word. Among the fragments we read thus: "While the Whigs considered all religious opinions with a view to politics, the Tories, on the other hand, referred all political maxims to religion. Thus the former, even in their hatred to Popery, did not so much regard the superstition or imputed idolatry * of that unpopular

* When Milton inculcated the duty of mutual forbearance among all Christians who appealed to the Holy Scriptures for the rule of their faith, he excluded from his scheme of ample toleration the Church of Rome alone, "whose idolatry was an offence to the Christian world." "The exercise of their religion, so far as it is idolatrous, cannot," he says, "be tolerated, either in public or private; not publiely without grievous and insufferable scandal given to all conscientious beholders; not privately without great offence to God, declared against all kinds of idolatry." But Milton was merciful enough not to call for corporal punishment, or severe fines, because "such severities stood not with the clemency of the Gospel, and should not be employed beyond what appertain to the security of the state."

I should be sorry to imitate the example of Bishop Gunning, "who," as Burnet tells us, "by setting himself with great zeal to clear the Church of Rome from idolatry, made many suspect him as inclined to go over, though he was far from it." Instead of vindicating or palliating what I think the errors of any sect or any church, I am disposed to consider the number and the value of the religious truths which they hold in common with the religious community to which I myself have the happiness to belong; and such truths, in the opinion of Hooker, are to be found even among the Roman Catholics. "He affirmed," as we are told by Dr. Gauden, "the Church of Rome, though not a pure, sound, and perfect church, yet was a true one, in which the necessary and fundamental means of salvation are preserved, but much diseased and obscured by superstitious superstructure, to the great danger of people's souls, and detriment

sect, as its tendency to establish arbitrary power in the state: while the latter revered absolute monarchy as a divine institution, and cherished the doctrines of passive obedience and non-resistance as articles of religious faith."* Without the smallest hesitation I should say that the tenets of the Tories, in making non-resistance an article of religion, were superstitious; by which I mean, that they were the effect of a blind, abject, excessive reverence for kingly power, a reverence "full," as Johnson says in explaining the word superstitious, "of idle fancies and scruples about religion" as peremptorily and universally forbidding resistance to the worst measures of the worst kings — a reverence which, as Johnson says in his second interpretation, was "scrupulous beyond need" about censuring those principles, and opposing those projects which must have shaken the foundation of our mixed and free government. But Mr. Fox has not said so. He confines the words superstition and imputed idolatry to the religious notions of Popery, and, even in so doing, he states, not so much his own judgment as the opinion of the Whigs: and who, let me ask, will deny that the most orthodox Bishops in the reign of James imputed both superstition and idolatry to the Church of Rome? If any objection should be raised upon the absence of the epithet "imputed" before superstition, and the introduction of it before idolatry, I should say, that the Whigs certainly ascribe both to the Papists; but that Mr. Fox used the word imputed because he might suppose it easier to prove the more general charge of superstition, than the specific charge of idolatry. He, in all probability, knew little or nothing of the distinction maintained by Papists and opposed by Protestants between Δουλεία and Λατρεία. But he might consider the latter charge as at once more odious and more doubtful than the former. The magnitude of the charge cannot be doubted when we consider that "nothing but the imputation of idolatry, which

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and dishonour of the Christian religion in its holy institutions, morals, and mysteries." I prefer this opinion of Hooker to the violent language of Mr. Travers, who "contended against the Church of Rome as no church of Christ, but wholly a synagogue of Satan, and the seat of Antichrist."—See Gauden's Life of Hooker, quoted in page 258 of Walton's Lives, edited by Zouch.

* Page 275.

was thrown on the Catholic religion, could justify, in the eyes of the Puritans themselves, the schism made by the Hugonots and other Protestants, who lived in Popish countries."*

Now, in point of fact, Whig ecclesiastics among ourselves have not been less zealous than the Tories in their endeavours to convict the Papists of idolatrous practice. "The approbation," says Burnet, "of the Homilies is not to be stretched so far as to carry in it a special assent to every particular in that whole volume; but a man must be persuaded of the main of the doctrine that is taught in them.

"To instance this in one particular; since there are so many of the Homilies that charge the Church of Rome with idolatry, and that from so many different topics, no man who thinks that church is not guilty of idolatry can with a good conscience subscribe this article, that the Homilies contain a good and wholesome doctrine, and necessary for these times; for, according to his sense, they contain a false and uncharitable charge of idolatry against a church that they think is not guilty of it; and he will be apt to think that this was done to heighten the aversion of the nation to it."†

The same accusation occurs repeatedly in the writings of Jortin, Blackburne, &c. and I must own, that to almost every Protestant the adoration paid to images has very strongly the appearance of idolatrous worship. The rubric of our Established Church, it must be further owned, explicitly charges idolatry upon the Roman Catholics in the following words: "The sacramental bread and wine remain still in their very natural substances, and therefore may not be adored (for that were idolatry, to be abhorred of all faithful Christians)." "Now the rubric containing the foregoing words was added at the end of the Communion Office (says Wheatley) in the second book of King Edward VI. against the notion of our Lord's corporeal presence in the Holy Sacrament, but was left out of the rubric when restored by Elizabeth. For it being the Queen's design to unite the nation in one faith, it was therefore recommended to the divines to see that there should be no definition made against the afore-

* Hume's History, Appendix to the Reign of James I.
† Burnet on Article xxxv.

said notion, but that it should remain as a speculative opinion not determined, in which every one was left to the freedom of his own mind."* After the conference at Hampton Court in the first year of King James I. the above-mentioned rubric was restored to the place in which it now stands, and from which I should be happy to see it once more removed. We have a precedent for moderation even to Roman Catholics. Do we not know, that in both the books of King Edward the Sixth the last deprecation of the litany ran thus? "From the tyranny of the Bishop of Rome, and all his detestable enormities, deliver us." This rough expression was expunged in the reign of Elizabeth, and I have not heard of any proposal for recalling it in later times, even when our Establishment was in real danger from the emissaries of the Church of Rome. We now have little to fear from "his detestable enormities," and the belief of Protestants on the subject of the sacrament stands in no need of protection from invidious accusations of idolatry against the Roman Catholics. The opinion of Protestants upon the elements is stated with sufficient clearness and accuracy in other parts of the church service.

I believe the exclusion of the passage which was restored in the reign of James I. to be such a measure as would not expose Protestants of our own days to the error of paying any superstitious or idolatrous adoration to the sacramental elements; and I am acquainted with very sensible and pious men who think that our churches might be adorned with pictures of scriptural history without any danger to the faith of Protestants from the opinions and example of the Greek Church. Be this as it may, I shall always bear in mind two important circumstances which distinguish the idolatry of the Church of Rome. It does not, like the idolatry of the heathens, exclude the belief and worship of the one true God. It does not like the idolatry of the Jews, introduce another law, which was high treason, nor transfer the obedience of a people from the Deity, peculiarly their Supreme Magistrate, to any other power, which was rebellion.† Properties,

* Wheatley on the Common Prayer, p. 26.

† See Warburton's Defence of his Fast Sermon, preached in 1745.

however, it has, which seem to me quite unauthorised by Scripture, and "I am apt to think" that the term was employed by our forefathers "to heighten the aversion" of Protestants to a practice of which I in common with them disapprove. But I should be unwilling to call every Roman Catholic broadly an idolator.* May he not see greater force, than I do, in the rea-

* I will tell a plain tale, not with any wish to palliate the practice of image-worship, but in order to correct a popular mistake, which I have sometimes read in theological books, and which imputes to the Roman Catholics great unfairness in their management of the Decalogue.

"In the division of the Decalogue, the Christian Churches are not agreed. The Church of England, and the whole body of Calvinists, with Josephus, make two distinct precepts of verses three, seven, Exod. xx. whereas the Roman Catholics and most Lutherans divide with St. Austin, and make one commandment of what the former make two, but to keep up the number of ten, they split what in the other division is deemed the ninth commandment."*

Every one who looks into Walton's Polyglot may see that the command not to make "sculptile neque omnem similitudinem, &c. neque adorare ea, nec colere" is retained in the Latin Vulgate: and surely as to the division it is of so little importance, that we may wonder it ever could beget a controversy. Yet, it has not only begotten vehement controversies, but unfounded misrepresentations on the part of Protestants, who maintained that the Papists had thrown the second commandment out of the Decalogue, because it condemned their image-worship."† "What seems," he adds in a Note, "to have given rise to this, was, the whole commandment having, in elementary catechisms been thus abridged: 'Thou shalt have no other Gods but me;' in the same manner as the precept concerning the sabbath-day is frequently abridged into, 'Remember to keep holy the sabbath-day.'"‡

In the admirable summary of the English Church upon our duty towards God, not a single word is said about the interdict given to the Jews against making or worshipping graven images; nor through the whole of our Catechism is there any express caution introduced against the practice of the Church of Rome.

The learning and acuteness of Dr. Geddes made him a competent witness. But did his education and office in the Church of Rome leave him a credible one? Yes, for unless he were certi-

* Geddes's Note on verse 4, Exod. xx.
† Ibid. ‡ Ibid.

sons assigned for the practice? and is he not also bounden to adhere to that practice, so long as he is sincerely satisfied with those reasons?

Upon this subject I approve the temperate language of Bishop Taylor, even when he is employing what seem to me the most powerful arguments against transubstantiation. "Their worshipping the elements," says he, "upon the stock of error and ignorance, I hope will dispose them to receive a pardon, but yet that also supposes them criminal; and though I would not, for

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tute of common sense and common honesty, he would not, in the eighteenth century have ventured to misrepresent, where any ordinary scholar could with ease have detected his misrepresentation. But let the question be decided by the following passage, which among many others, strongly marks the candid and ingenuous mind of Dr. Geddes:

"Nothing could be more ridiculous than the violent declarations of Protestants against the use of images in the Romish Church, and the application of this precept to that use; although, on the other hand, it must be confessed, that the use has sometimes been turned into an abuse bordering on idolatry." Hence, though Geddes in his translation of the Hebrew word עבד has followed Jerome and the Greek Ver. "carved worship;" he has added in italick characters the Septuagint Version, εἴδωλον. Dr. Geddes would, I believe, have given Mr. Fox credit, as I do, for his moderation, in writing "imputed idolatry;" and the Dr. has himself allowed some grounds for the imputation to exist.

The most satisfactory arguments to my mind are the principle rather than the letter of a Mosaic prohibition, originally directed against Ægyptian idolatries, and closely interwoven with the whole political as well as religious system of the Jewish theocracy: the Scriptural doctrine of one mediator, and the danger of transferring to any visible representations of the Creator or his creatures that homage which is due only to one invisible and spiritual Being. I am dissatisfied and even disgusted with some passages in the famous letter of Gregory the Second to the Emperor Leo. I have much to oppose to the reasoning of other and later Romanists. But I respect their researches in literature and their acuteness in controversy. I am not warranted in arraigning the sincerity of their belief or the uprightness of their intentions; and at all events I should be ashamed of urging against them any invidious and even false accusations of disingenuous omission, or unauthorised arrangement in the Decalogue.

all the world, be their accuser, or the aggravater of their crime, yet I am not unwilling to be their remembrancer, that themselves may avoid the danger."

"I will not censure concerning the men that do it, or consider concerning the action, whether it be formal idolatry, or no. God is their judge and mine; and I beg he will be pleased to have mercy upon us all."*

"If the nation," says Burnet, on Article XXXV, "should come to be quite out of danger of falling back into Popery, it would not be so necessary to insist upon many of the subjects of the Homilies as it was when they were first prepared." I presume not to point out to my ecclesiastical superiors any of the alterations which it may be "necessary in these times" to make in the Homilies. But I am convinced, that throughout Great Britain there is not the smallest danger of a relapse into the errors of Popery. If a Catholic zealot like Père Coton, confessor to Henry the Fourth of France, were to say that he could do any thing when he had his God in his hand and his king at his feet, meaning him at confession, and the other in effigy of the crucifix or in the host," he will be an object of contempt or pity, rather of terror. The Sovereign now on the throne and his family are firmly attached to Protestantism, and it is plain enough, not only from recent events, but from other and better causes, that neither the members of the Establishment, nor any class of Protestant Dissenters have the least inclination to adopt Catholicism. Yet when the most enlightened and determined Protestant looks back to the controversial questions which were agitated in former times, and which it were useless or dangerous to resume in our own age, he perhaps would vouchsafe to receive some instruction from the judicious and candid observations of Jeremy Taylor: "If it be possible for so great a company of men, of all sorts and capacities, to believe such impossible things, and to wonder that others do not eandem insaniam insanire, it will concern the wisest man alive to be inquisitive in the articles of his first persuasion; to be diligent in his search, modest in his sentences, to prejudge no man, to reprove the adversaries with

* Chap. xiii. par. 14. of the Treatise on the Real Presence.

meekness, and a spirit conscious of human weakness and aptness to be abused."*

"There are a sort of men that hate some good things which the Church of Rome teaches, because she who teaches so many errors is the publisher and the practicer of those things. I confess the thing is always unreasonable; but sometimes it is invincible and innocent, and then may serve to abate the fury of all such decretory sentences as condemn all the world but their own disciples.

"When a prejudice works tacitly, undiscernedly, and irresistibly of the person so wrought upon, the man is to be pitied not condemned, though possibly his opinion deserves it highly.

"Education is so great and so invincible a prejudice, that he who masters the inconvenience of it is more to be commended than he can be justly blamed that complies with it.

"You may as well charm a fever asleep with the noise of bells, as make any pretence of reason against that religion which old men have entailed upon their heirs male so many generations 'till they can prescribe. And the apostles found this to be most true in the extremest difficulty they met with, to contest against the rites of Moses, and the long superstition of the Gentiles, which they therefore thought fit to be retained, because they had done so formerly, pergentes non quo eundum est, sed quo itur, and all the blessings of this life which God gave them, they had in conjunction with their religion, and therefore they believed it was for their religion, and this persuasion was bound fast in them with ribs of iron, the apostles were forced to loose the whole conjunction of parts and principles in their understandings, before they could make them malleable and receptive of any impresses. But the observation of all wise men can justify this truth. All that I shall say to the present purpose is this: that consideration is to be had to the weakness of persons when they are prevailed upon by so innocent a prejudice, and when there cannot be arguments strong enough to overmaster an habitual persuasion bred with a man, nourished up with him, that always eat at his table, and lay in his bosom, he is not easily to be called

* Epist. Dedicat. to the Treatise on the Real Presence.

heretic, for if he keeps the foundation of faith, other articles are not so clearly demonstrated on either side, but that a man may be innocently abused in the contrary. And therefore in this case to handle him charitably is but to do him justice: and when an opinion in minoribus articulis is entertained upon the title and stock of education, it may be the better permitted to him, since upon no better stock nor stronger arguments, most men entertain their whole religion, even Christianity itself."*

"Though, in a matter of consequence, so long as the foundation is entire, every man that errs cannot be suspected justly guilty of a crime to give his error a formality of heresy; for we see many a good man miserably deceived (as we shall make it appear afterwards), and he that is the best amongst men, certainly hath so much humility as to think that he may be easily deceived, and twenty to one but he is in some thing or other; yet, if his evil be not voluntary, and part of an ill life, then, because he leads a good life he is a good man, and therefore no heretic."†

Such were the sentiments of a prelate eminently distinguished for learning and piety, and for attachment, unfeigned and unalterable, to the established religion of this country. They carry with them the authority of principles to my mind, because I believe them to breathe the true spirit of Protestantism. Though employed formerly in some instances against zealots in the Church of Rome, they may now furnish general rules for assuaging the excess of zeal in other religious communities; and if the persons who adopt and act upon them should gradually diffuse a spirit of mutual forbearance among their Christian brethren of every denomination, their "labour will not be in vain."

Let it not be supposed that I have the smallest intention to vindicate those doctrines which my Protestant brethren may consider as superstitious or even idolatrous in the adherents of the Church of Rome. But in the present state of public opinion I see more practical harm than practical good in the application of such offensive words as might, in a former and less happy condition of the world, have not been wholly unjustifiable. I am not a stranger to the controversies in which our

* Section 2 on Liberty of Prophesying. † Ibid.

forefathers were laudably and I think successfully engaged against the Roman Catholics, and from my own conviction upon points of faith peculiarly important to Protestants, I shall ever respectfully and thankfully acknowledge myself indebted to the writings of Bishop Hall, Jeremy Taylor, Dr. Barrow, John Hales, Chillingworth, Bishop Warburton, and other celebrated divines both English and foreign. Great is the information which their labours will afford to any impartial reader in his closet upon particular points of doctrine. But the well-known example of Chillingworth should put us upon our guard against any general language of contempt or hatred towards persons who generally hold the faith of the Church of Rome, and who in holding it may have the same claim with ourselves to the praise of diligence, learning, sagacity, sincerity, virtue, and piety. Wheresoever the truth may lie, the merit of searching for it belongs, I trust, to both parties, and it were scandalous to deny that great abilities have been employed by Roman Catholics, as well as by Protestants. Difference in opinion will not destroy every sentiment of moderation and respect in those men who understand the practical as well as speculative uses to which as scholars and as Christians they may apply the following words of Jeremy Taylor: "I knew a scholar once who was a man of quick apprehension and easy to receive an objection, who when he read the Roman doctors was very much of their opinion, and as much against them when he read their adversaries, but kept himself to the religion of his country, concerning which at all times he remembered that there were rare arguments, and answers respectively, though he could not then think upon them."* As to myself, I hope to live and to die in sincere and affectionate communion with the Church of England. But I also hope to find a better way of showing myself either worthy to live, or fit to die within the pale of it, than by insulting Roman Catholics with the opprobrious imputations of superstition and idolatry.

I do not mean to involve Mr. Fox in the guilt of that discretion and that moderation, which, I trust, will ever regulate my own conduct towards the Roman Catholics. But I hope not to be unsuccessful in my endeavours to show, that, in the application

* Ductor Dubitantium, book i. chap. 5.

of the word superstition—a word which is often employed by infidel writers to throw a kind of indirect reproach upon religion, Mr. Fox has not even incidentally furnished his enemies with any pretext for accusing him of latent infidelity,

"Id cinerem, et manes credo curare sepultos."*

As it was the lot of Mr. Fox to act in very eventful times, and to fill for many years a large space in the public eye, his warmest partizans cannot be surprised at great difference of opinion upon what the Reviewer calls, "his sanguine temperament, and his disposition to run into extremes." When he stands before the world in the character of a historian, readers of every party are entitled to form their own judgment upon the literary and political merits even of an unfinished work. But the charge of infidelity must be painful, beyond all other reproaches, to the better and the greater part of those who admired his talents, or cultivated his friendship. It is therefore with peculiar anxiety that I have examined the grounds on which this formidable accusation is raised, and I trust that the attempt I have made to refute it will not be offensive to men of virtue, or unsatisfactory to men of reflection.

Alas! I am sufficiently versed in the history of churches, and the controversies of churchmen, to know with certainty, and to lament with sincerity, the "rabid and unrelenting" spirit which frequently, I do not say exclusively, distinguishes the odium theologicum. In the very act of defending that religion which forbids us to "judge lest we be judged," those disputants have been too prone to censure persons instead of examining things—prone to confound particular opinions with general principles—prone to load their adversaries with invidious consequences which those adversaries did not foresee, or which, being told of them, they did not admit, or which, admitting them, they would not consider as evidences against their views of facts and principles—prone to assign criminal motives as the causes of erroneous tenets—prone to let loose indiscriminate reproaches on the dauntless inquirer and the shameless scorner—prone to infer deistical propensities from heresy real or supposed, and to insinuate that

* Virgil, Æneid 4.

professed deism is employed as a cloke for lurking atheism. Heaven forbid that I, or my friends, or my enemies, should have "so learned Christ!"

Bigotry may exist without the adjuncts of infidelity or superstition. Possible it is that the Reviewer and myself may not be without some portion of latent bigotry in the attachment we feel to our respective opinions in politics and religion; and well does it become us "so to try and examine ourselves" that we at the last day may not be numbered among the false "accusers of our brethren." It is proper for me to add, that Mr. Fox imputes bigotry, not superstition, to the English prelates who attended Monmouth, that he imputes neither the one nor the other to the English Church, and that no passage in Mr. Fox's History, no position in his other publications, nor any principle, statement, or even insinuation in any of his parliamentary speeches, will justify any man of common discretion, or common candour, in deliberately charging Mr. Fox with infidelity at all—much less with infidelity aggravated by "morose, illiberal, rabid, and relentless bigotry." The well-meaning zeal of the Reviewer may have made him, for the moment, indiscreet and uncandid. But I am persuaded that, upon reconsidering the sentence of which I have been speaking, he will be disposed to retract, or to soften it, as applicable to Mr. Fox.

When Mr. Fox wrote his History he did not foresee that any part of it would give rise to a discussion upon the rubric. But his account of the ecclesiastics who attended Monmouth has induced, we see, some critics to appeal to that rubric for the justification of those ecclesiastics, and has also been made one of the grounds for charging Mr. Fox with bigotry and infidelity. I thought it, therefore, my duty to controvert that opinion, and to repel that charge, because they were brought forward in a work which is known to have all the advantages of extensive circulation, of episcopal and ministerial patronage, and of well-earned celebrity for vigilance, ardour, and activity in the defence of church and state.

APPENDIX

TO THE

NOTE UPON Mr. FOX'S HISTORY

OF THE

REIGN OF JAMES II.

No. I. p. 424.

As the temporal power of the Pope is now almost annihilated, the opportunities for him to aim at any extension of territory taken away, and the incitements for him to engage directly in the wars of European sovereigns very much diminished, there may seem little room for Mr. Gibbon's objections on the advanced age and confined education of the persons who fill the chair of St. Peter. To me, however, it appears, that, for other reasons, these objections have now greater force than ever. In the present state of Europe it is peculiarly necessary for the Bishop of Rome to unite great sense with great moderation, and to avoid the appearance, as well as the reality, of interference in the secular concerns of Princes, whether Catholic or Protestant. If the discipline of the Roman Catholic church be gradually adapted to the exigencies of the times, and a spirit of sound discretion and forbearance be encouraged in the priesthood, it may be safely left with the wisdom of his Holiness, jointly, I should imagine with the authority of Councils, to adjust matters of doctrine, to avail themselves, as to them may seem fit, of the general progress made by civilized nations in various branches of useful knowledge, and to correct, or continue errors, whether real or supposed, upon political, and even moral and religious grounds, of which Protestant teachers, after all, may be incompetent and prejudiced judges. Freedom of enquiry in private persons, when far extended, and quite unshackled by artificial restraints, is favourable to the discovery of truth, and through the progressive influence of truth upon practice, is eventually condu-

cive to the best interests of society. But changes made by authority in the tenets of a religion long established, require great circumspection in the choice of time and measures—great observation upon the permanent and fleeting, prominent and latent, causes of manners and opinions—great insight into the political history, as well as the theological reasonings of controversy—great knowledge of past and present circumstances—great impartiality and sagacity in the calculation of future consequences. Why then should we censure any other church for asserting that right which may be judiciously and virtuously exercised by our own?

The intellectual and active pursuits of men—the relations in which they stand one to another as individuals or classes—the views which they take of their interests and perhaps their duties—Governments, manners, and many other external objects connected with their agency, are continually, though for a time imperceptibly, undergoing more or less alteration. Hence in their ecclesiastical as well as their civil concerns, real and complete uniformity is neither attainable, nor indeed desirable, through many successive generations. Even among those who set up the highest pretensions to such uniformity, changes, which it were vain to dissemble, will in many instances be covered by unprejudiced and serious observers. The well and the ill-directed love of truth, the struggles of literary and political competitions, the warfare which arises between the stubbornness of bigotry and the ardour of novelty, the disuse of old terms, and the introduction of new ones, both in familiar and scientific language, co-operate with many other causes in giving a different turn to the sentiments of reflecting and unreflecting men upon religious subjects. But true policy as employed in watching the properties and extent of those causes, is inseparable from true morality; and in the absence of selfishness, or indifference, or superstition upon the part of those who govern the affairs of the world, it might not be very difficult to balance the comparative inconveniences of precipitation and delay. An ecclesiastical establishment which is intended to guide the bulk of mankind ought itself, in some degree and upon some occasions, to be guided by those principles, or modifications of principles, which have slowly found their way to

the conviction of wise and virtuous enquirers. I therefore believe that every religious community, keeping in view the numerous and interesting circumstances which I have mentioned in a foregoing paragraph, might be progressively improved by well-timed and well-conducted revisions of its tenets and its discipline. Yet "a church which frequently modifies, varies, and changes its doctrines," is, I do not say with Bossuet, "destitute of the direction of the Holy Spirit," but, I do say, deficient in that sound discretion which, aiming at general utility, and looking to the comparative importance as well as credibility of religious opinions, would practically forward the most proper and most beneficial purposes of a national church, to which the laws wisely intend to assign permanent, as well as extensive influence. Upon the favourite maxim of Bossuet, Mosheim and his learned Editor have made some very judicious observations, which may be found in page 310, volume four, of Mosheim's Ecclesiastical History, second edition.

No. II. p. 687.

"When Ravaillac assassinated Henry the Fourth it was from a principle of religion. But this did not so much abate from the mischief of the act. It even rendered the act still more mischievous, for a reason we shall see presently, than if it had originated from a principle of revenge."*

The reason is thus explained in page 165.

As to the motive of religion, whatever it may sometime prove to be in point of strength and constancy, it is not in point of extent so universal, especially in its application to acts of a mischievous nature, as any of the three preceding (i. e. self-regarding) motives. It may, however, be as universal in a particular state, or in a particular district of a particular state. It is liable, indeed, to be very irregular in its operations. It is apt, however, to be frequently as powerful as the motive of vengeance, or indeed any motive whatsoever. It will sometimes be more powerful than any other motive. It is at any rate much more con-

* Bentham's Elements, p. 162.

stant. A pernicious act, therefore, when committed through the motive of religion, is more mischievous than when committed through the motive of ill-will.

On the word conscience there is an interesting Note, of which I shall produce the most interesting part.

"Fanaticism never sleeps; it is never glutted; it is never stopped by philanthropy, for it makes a merit of trampling on philanthrophy; it is never stopped by conscience, for it has pressed conscience into its service." The foregoing observations are founded upon an accurate knowledge of human nature; and many of my countrymen, from their experience of the past, and with their prospects of the future, would do well to reflect upon the justness and importance of them.

Let me take this opportunity of commending, as I ought to do, most sincerely and most ardently, three pamphlets, for which the well-wishers to genuine Christianity and our ecclesiastical establishments are indebted to Mr. Sedgwick.* His statements of facts, his arguments from reason and scripture, and his animated description of characters, do honour to the elegance of his taste, the vigour of his understanding, and the soundness of his moral and religious principles. They will preserve, I trust, many well-meaning and attentive readers from the sorceries which might be practised upon their credulity and their piety. But fanaticism, when it has once taken possession of common minds,

> "Nec modum habens neque consilium, ratione modoque
> Tractari non vult."†

The attic raillery of Addison, the caustic satire of Swift, the solid reasoning of Locke, the energetic eloquence of Barrow, the profound learning of Taylor, Pearson, Bentley, and Stillingfleet, the pious expositions of Christian Fathers, the glowing expostulations of Prophets, the simple, sage, and solemn preaching of Apostles, would be of little or no avail when opposed to them stand the

"*Θεόκληροι, θεοδίδακτοι, θεόσσυτοι, θεόπνευστοι, θεόγλωσσοι κήρυκες Ἰησοῦ Χριστοῦ,*"

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* Let me add, that in the first Number of Mr. Cumberland's Review there is a most argumentative and animated critique on the Life of Mr. Newton lately published by Mr. Cecil.

† Horat.

such as Whitfield, Wesley, Romaine, Hawes, Hawker, Rowland Hill, Newton the midshipman, Bunyan the tinker, Boehmen the shoemaker, and other nameless rhapsodists, whose

'Θεόρυτοι καὶ θεοτέρατοι λόγοι,'

however understood and admired they may be in some of our conventicles, are not so well adapted to pulpits in what I think the best Ψυχῆς Ἰατρεῖον in Christendom, the Church of England.

I have often endeavoured to understand the grounds and the properties of that vital religion which is so eagerly inculcated, and so loudly extolled. But the spirit of it I must confess

Οὐκ ἐμοὶ χριστὸς δοκεῖ,
'Ἀλλ' ἔστι πολλῶν ὀνομάτων ἐπώνυμος.
Ἔστιν μὲν ᾄδης, ἔστι δ' ἄφθιτος βία,
Ἔστιν δὲ λύσσα μαινάς.*

The rapidity, stubbornness, and virulence of the malady which is spreading around us, are equally alarming. By a process scarcely paralleled in any other kind of intellectual or moral aberration, this mentis gratissimus error diffuses its influence from the whole head, over the whole heart. It appears to endow men with eyes which see not, and ears which hear not. When philosophy, or history, or criticism, offers any aid to the fanatic, he either

'Fit pugil, et medicum urget,'†

or answers with mingled scorn and self-complacency to the following effect:

'Ἔα με τήνδε τὴν νόσον νοσεῖν, ἐπεὶ
Κέρδιστον εὖ φρονοῦντα μὴ δοκεῖν φρονεῖν.'‡

Now the nobility and gentry among the Roman Catholics have a visible interest in watching and restraining the zeal of Roman Catholic priests. Rational Dissenters (as they denominate themselves) have embraced a theological system which carries with it few allurements to enthusiasts; and widely as they may differ from the doctrines of the English church, they have far less to

* Fragm. Eurip. or Sophocl. † Horat.
‡ Æschyl. Prom. Vinct. lin. 384.

dread from its discipline than from those "wholesome severities," which in the giddiness of power, and the blindness of bigotry, our evangelical sectaries would be impelled by their conscience truckling to their ambition and vengeance, to employ against what they would call the impious heretic and the factious schismatic. Is it not sound policy, then, to conciliate the Roman Catholics and Rational Dissenters, and at the same time not to oppress the common foes of them and the establishment—not to irritate them by contumelious and legal disabilities for this or that secular office—not to subject them to stripes or imprisonment—God forbid this!—but, by well-considered and well-applied regulations to restrain them, as men who might be ready to do evil that good, according to their own peculiar apprehensions of duty, and perhaps their own views of their own peculiar interests, may come—men, who actually do hold language not only the most insulting to a learned priesthood, but the most inflammatory to illiterate hearers? In a printed paper, and with the signature of their names, have not twelve of these officious missionaries boasted of having lately introduced the gospel in the neighbourhood of a city where, according to the import of their words and the conceptions of their followers, Heathenism, or Mahometanism, or Judaism, or rank Deism, may have been heard, but the gospel has not, for centuries upon centuries, either in parochial churches or a cathedral? Not very long ago, nor very far from the place where I have resided for more than twenty-three years, and where, to say nothing of well-meant, and perhaps well-chosen advice conveyed by sermons, the service of our Common Prayer Book—a service established by the national laws, endeared to us by long use, prepared at first by Protestant reformers, and some of them Protestant martyrs, improved by subsequent revisions from learned prelates and dignitaries, selected in many parts from the offices of Christian churches and the works of Christian Fathers, written almost every where in a clear and most impressive style, replete with instruction to the young and the old, the rich and the poor, the prosperous and the unfortunate, the virtuous and the wicked; and in addition to all these excellencies of human composition, containing large portions of scripture in the Psalms, Lessons, Epistles, and Gospels—yes, in that very sanctuary where this very service is generally

performed with due exactness, and, I would add, seriousness, one of our evangelical preachers, in the presence of a plain and well-disposed congregation, mingled at the moment with a crowd of vagrant and intrusive Methodists, expressly and unblushingly talked of himself as *introducing* to his dearly-beloved hearers, a stranger, Jesus Christ.

Introduce seems to be an occasional watch-word of these Modern Hirim—a tessera by which the faithful champion of religion is distinguished from the lukewarm hireling who at any time puts his trust in the "carnal weapons" of reason and morality—a Shibboleth which separates the true Gileadites, happily gifted with "tongues that are for a sign," from the recreant and babbling Ephraimites.

If persons bearing high academical titles, and fancying themselves in theology, *τρίτον κρατῆρος γείσασθαι*, thus in effect represent the whole service of the church as established by law, and the whole preaching of churchmen, except their own, as having in them no portion of Christianity, what are we to expect from other teachers, who understand *οὐδὲ τὰ τρία Στησιχόρου*.

When language of this portentous kind is gravely uttered in the sanctuary, it makes, and is intended to make, an instantaneous and deep impression, which no smooth explanations, no sly evasions, no partial and compulsory retractations can afterwards efface.

"The Papists," exclaims the fanatic, "keep the scriptures from the laity. The English clergy read them, but cannot teach them, for they understand not the saving truths of the word, nor feel its vital energies. Precious, therefore, to us, and quite inestimable, is the privilege of comparing the regenerate state of man with his unregenerate. When the 'wind blew,' we, like other blind and reprobate sinners, 'vainly puffed up by our fleshly minds,' once supposed ourselves to know 'whence it came and whither it was going.' But we thankfully remember when and where, and by what lips touched with the dew of sacred truth, the 'gospel was first declared' unto us. To us it is now given to understand the mysteries of the kingdom of heaven, to be endowed abundantly with the 'means of grace,' and to be refreshed with 'the sure and certain hope' of glory. In the mean

while the nominal Christian followeth things which have only a 'shew of wisdom, and is taken in his own craftiness.'"

But surely, dear Sir, there is no real evil, no unseemly appearance of evil, no dimness in that goodly aspect which a Christian church favoured by the laws ought to wear in the sight of the Christian world, when separating the strength from the weakness of human reason, we call in profane learning to our aid in the study of sacred—or, when we blend the principles of morality and occasionally even the words of the wise and virtuous sages with the simple and hallowed language of holy writ—or, when we insist upon the love of our neighbour, as a sure criterion of sincerity and proficiency in the love of our Maker—or, when we investigate the evidence which natural religion supplies for the probability of a future state, and at the same time distinguishing between that evidence, and the animating prospects which revelation opens to us, we hold up to the admiration and the gratitude of mankind, the doctrine of ETERNAL LIFE, as especially and solely the unmerited and covenanted "χάρισμα τοῦ θεοῦ ἐν Ἰησοῦ Χριστῷ." If this be Heathenism, where are the well-educated or the unlearned to look for Christianity? Not, I am sure, in those new lights which we cannot follow without maintaining, that for many revolving ages, and amidst the acknowledged progress of society in arts, science, and civilization, yes, in concerns far weightier, the clergy and laity have been doomed to wander in utter darkness, mutually deceiving and deceived, mutually corrupting and corrupted—not in quarters where pharisaical ambition may be lurking, and pharisaical pride has already stalked forth in open day—not among the rapturous panegyrists of faith and grace, exclusively understood, and exclusively, forsooth, experienced by themselves—not among the insidious or contemptuous revilers of good works, which being "written by the law on our hearts," and carrying with them "the witness of our consciences," are recommended by us, the unenlightened and unregenerate, as indispensable conditions of salvation to all true believers, and indeed all moral agents. That the majority of Christians in every church and almost every sect, have not yet been called to the knowledge of any "saving truth," and that a few only have been chosen to partake of it, is a position not very likely, I think, to support the spirits of

those who have embraced what we call the gospel, or to check the triumphs of those who reject it. So, however, within the bosom of the established church, do some men teach, and so, within as well as without the pale of it, do many believe.

As a friend to toleration I would not impose restraints upon mere opinion in controverted points of doctrine; and of my consistency I give a plain proof, when knowing, and in many points differing from the respective creeds of Rational Dissenters and Roman Catholics, I should be glad to see both of them delivered from certain distinctions, which are directly offensive, and may be indirectly, as some men think, even oppressive. But the froth of petulance and the foam of zeal cease to be only contemptible when, mingling with the venom of malevolence, they are scattered in the sanctuary. Hence, as a well-wisher to decorum, to Christian charity, and to the public peace, I think that such presumptuous vauntings, such outrageous revilings, such mischievous insinuations as I have stated in two of the foregoing pages, call aloud for some notice from the legislature. Have not our forefathers been told, that "dominion is founded in grace?" Silent, indeed, but rapid is the growth of such grace, and who but the elect are worthy to experience its impulses? But they who introduce the gospel today may hereafter think themselves qualified and even commissioned from above to found a State.

"The passions," says Malebranche, "justify themselves," and it has often been remarked, that hypocrites, while they deceive others are themselves by themselves deceived. Ambition, however disguised in the garb of humility, is steady in the pursuit of its own purposes, and fanaticism, however it may revel in the luxuries of its own visions in heavenly things,* is wont to

* Experience shews that a spirit of fanaticism is cherished by the circulation of prophecies, which, however they may point for a time to one definite event, prepare the minds of the credulous and illiterate for participation, or at least acquiescence, in other changes, as means for the final accomplishment of the desired end. I shall, therefore, leave the venerable prelates, and other guardians of the English Church, to their own reflections upon the ultimate tendencies of a letter which appeared in the Birmingham Commercial Herald of May 1, and the Birmingham Gazette of May 8, 1809, which is signed by a grave clergyman

turn an oblique and "lingering look" to things earthly, not, we shall be told, as ultimate ends, but as favourable means for

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of the Establishment, and which, from the circumstances of publication and re-publication must have been designed to excite much attention, and to produce considerable effect, in a large manufacturing town and its neighbourhood. After stating that "a Joanna Southcott had been falsely accused of three heavy charges—that, as to the first charge, though Mary Bateman, who had lately suffered the just sentence of the law at York, had a seal, yet the wicked and diabolical conduct of Bateman can no more, in justice, be ascribed to Southcott," who, as it appears from the sequel, distributed her own seals, "than the wicked and diabolical conduct of Judas can be ascribed to our blessed Lord, because he was one of his disciples; and this the wise will understand, though the wicked will not:"

That as to the second charge, Southcott had not predicted the destruction of Bath on Good Friday, but had pronounced the person who uttered that prediction "a false prophetess:"

That as to the third charge, Southcott, "on the evidence of fifteen thousand persons, could be proved not to have sold her seals for half a crown each, nor suffered them to be sold, but to have given them 'without money and without price,' a free gift to all who had faith to believe in her inspired writings, as well to the poor as to the rich:"

The reverend writer thus proceeds:

"I shall give a short sketch of her divine mission, which is, to warn the world of the second coming of the Lord Jesus Christ, to destroy Satan's kingdom of misery, evil, and woe, and to establish his own glorious kingdom of love and peace upon earth for a thousand years, as is promised in the 20th chapter of the Revelations, when he will reign in spirit during that period among the children of men before the general judgment.

"Her writings only lead those who will follow their directions to the scriptures of truth, and point out how the promises and prophecies of that golden book, the Bible, will be fulfilled and accomplished; and demonstrate irresistibly, that the kingdoms of this world will soon become the kingdom of the living God, and he will reign for ever and ever. Illustrious era! Thine it is to close the long series of preparation which Providence has been carrying on from the first of time! Thine to fulfil the wishes of the worthy and devout of every age and every clime! Thine to recover man from depredations and dishonour! Thine to consummate the mission, and to adorn with its brightest honours the crown of the Saviour of the World! Thine to vindicate the government, glorify the perfections, and illustrate the

introducing and diffusing vital religion among nominal Christians. Now the spirit, as well as the notions of the old Puritans, has spread itself among certain sectaries of our own days, and their allies in the English church. Hence, towards the Roman Catholics,

" vetus atque antiqua simultas,*

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all-bounteous character of the God of Love! Thy approach, glad period, will be hailed by myriads of intelligent beings, who, animated by thee with a celestial glow of devotion, will give expression to their raptures in the long-suspended song of angels—"Glory to God in the highest, on earth peace, and good-will towards men.'

THOMAS PHILIP FOLEY,
Rector of Old Swinford.

Old Swinford, Worcestershire, April 1809.

I would beg leave to state, that the animated conclusion of Mr. Foley's letter, beginning with the words "illustrious æra," is taken almost verbatim, without acknowledgment, from the close of a very eloquent sermon, delivered at Newport in the Isle of Wight, on the Fast Day in 1803; written by the Rev. Robert Aspland, who does not speak of a millennium, and printed at Cambridge in 1804 by B. Flower.

* I cannot yield unqualified assent to the sarcastic observation of Mr. Gibbon, that "the vices of the clergy, to a philosophic eye, are far less dangerous than their virtues." I hold the general proposition to be false, and I should hope, that if he "who professed even in a conqueror or a priest to surprise a word or an action of unaffected humanity," (vol. v. p. 155, 251.) had looked with an unprejudiced eye on the English clergy of his own days, he would have found abundant reason for approving in them the practice of those virtues which adorn and sustain society, and none for being surprised, if he were to have found that such virtues are congenial to the letter and the spirit of the religion which they profess. But I do most unfeignedly agree with Mr. Gibbon, when he says, that "God has written his existence on all his works, and his law in the heart of man" (p. 205);—that "benevolence is the foundation of justice, since we are forbidden to injure those whom we are bound to assist—that a prophet, though he may reveal the secrets of Heaven and futurity, can in his moral precepts only repeat the lessons of our own hearts" (p. 205);—that "many a sober Christian would rather admit that a wafer is God, than that God is a cruel and capricious tyrant." (p. 537.) If it be said, that an infidel, even where he is neither directly nor indirectly defending the cause of infide-

Immortale odium, et nunquam sanabile vulnus
Ardet adhuc."*

That hatred may be mingled with sincere disapprobation of some opinions now maintained by the Church of Rome. But it may also be accompanied by other considerations not entirely spiritual—I mean, by a secret and restless jealousy of that ascendancy which a religious instructor in the Romish or any other church may be supposed to gain over his followers, when they have once been persuaded to associate the idea of merit with prompt and implicit assent upon mystical or controverted points of doctrine —to confound inexplicable phænomena with contradictory propositions — to admit interpretations of scripture, which upon strict inquiry may appear to be against reason, under the pretext that the subjects are above it—to abandon what is plain, for the sake of dogmatising upon what is obscure—to pronounce a favourite teacher infallible in his tenets, because they are the immediate and genuine suggestions of the "Spirit," not "given to him," by scant "measure," but abundantly, as is meet, and even necessary, for the holy duties of one who is professedly and preeminently "an apostle according to the faith of God's elect."

"En animam et mentem, cum quâ Dii nocte loquantur."

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lity, rarely sees truth, or writes good sense, on subjects of religion, I should reply, that the passage last quoted from Mr. Gibbon, though similar in principle, does not carry the conclusion from it quite so far as it has been carried by Lord Bacon. "It were better," says this great and real philosopher, "to have no notion of God at all, than such an opinion as is unworthy of him; for the one is unbelief, the other contumely."—Essay 18.

They who hold, as I do, that in addition to the bad tendency of atheism upon the morals of men in private life, it may co-operate very powerfully with other causes, "in perturbing states," will agree with the same philosopher, where he, in the same essay, observes, "Superstition" (he means when united with fanaticism, as it often is,) "hath been the confusion of many states, and bringeth a primum mobile, that ravisheth all the spheres of government. The master of superstition is the people, and in all" such "superstition wise men follow fools, and arguments are fitted to practice in a reversed order."

* Juven. Sat. 15.

From the usual deceitfulness of the human heart, the love of power has already incorporated itself with the real or pretended love of truth. The actual attainment of power may hereafter be insisted upon as a presumptive argument for the actual discovery of truth. But when power begins to be exercised, and truth to be disseminated, by such persons as many of our modern claimants to evangelical knowledge seem to be, disguise will be thrown aside as useless, restraint will be defied as ineffectual, desire will increase with possession, right will grow out of conscious strength, and a "new earth," as preparatory to a "new heaven," will soon become the favourite object of reformers, who have met with external opportunities, and are guided by internal impulses to "make all things new."

Mr. Pitt, if he were living, would not be inattentive to the number of these Evangelical Christians, their activity, their ample funds for the purchase of presentations and advowsons, or their spiritual alliance with two powerful classes of professed, and, so far, honourable sectaries. Mr. Fox, with equal unwillingness to invade their social rights, and equal foresight of the dangers to be expected from their unsocial temper, would have been disgusted with their arrogance and their uncharitableness. Mr. Burke, without having recourse to invidious and rhetorical exaggeration, might have rendered to his country a most important service, by describing their spirit, unravelling their sophistry, and developing their real and their distant views. Mr. Canning, I am sure, has too much good-nature to be tainted with their virulence, too much good sense to be decoyed by their wiles, and too much taste to be captivated by their harangues. He is more conversant, I believe, in Pindar's Odes than Wesley's Hymns; and if one of his colleagues, factus de Rhetore Consul, were to expatiate upon the soothing unction administered by these skilful physicians of the soul, the witty but unregenerate secretary might be tempted to throw the new light of common sense upon the phrase, and apply to it what Cicero said of Carian, Phrygian, and Mysian declaimers: "Quod minime elegantes sunt, adsciscunt aptum suis auribus opimum quoddam et adipatæ dictionis genus."*

* Vid. Orator, vol. i. p. 156. edit. Gruter.

On the evidence of our newspapers, the editors of which upon such topics, rarely err, and yet more rarely have any temptation to misrepresent, I stated in page 777 that a motion had been made in Parliament for extending to Scotland the capital punishment which in England has long been inflicted upon offenders convicted of infanticide; and as the account was not afterwards corrected, I thought it my duty to offer some objections to the supposed harshness of the statute. Great, however, was my satisfaction upon finding, as I have done, within these few days, the chief object of the motion is to procure the repeal of an act which passed in the reign of James the First, and which made the concealment of the birth of a child a proof of murder, unless the mother could shew that it was not born alive; that the Bill therefore, is a measure not of rigour, but clemency; that the provisions of it seem to be founded upon some principles for which I have myself contended; that the spirit of it cannot fail to be acceptable to the enlightened people for whose benefit it is designed; that the mover of it has supplied an additional exception to that general reluctance which has been observed in professional men to mitigate the severity of penal laws, and that for his wisdom and humanity he is eminently entitled to the thanks of his countrymen, and the praise of his contemporaries. I could not without great inconvenience exclude from this volume the sheets which had been printed off before I received the information above-mentioned. But the seeming impropriety of suffering them to remain is in some degree lessened by the probability that several of the observations contained in them have a tendency to answer other useful ends, besides those to which they were primarily and more immediately directed.

When my subject led me to give a more correct account than Petit has done, of the Athenian practice in exposing children, I took occasion to state my opinion that a similar practice among the Romans was of great antiquity. I shall, therefore, in this place insert a passage, which not only establishes the fact, but contains more direct information upon the origin and provisions of the Roman law, than I have hitherto been able to find upon the author and contents of the Athenian.

"Πρῶτον μὲν εἰς ἀνάγκην ὁ Ῥώμυλος κατέστησε τοὺς οἰκήτορας τῆς πόλεως ἅπασαν ἄῤῥενα γενεὰν ἐκτρέφειν, καὶ θυγατέρων τᾶς πρωτογόνους· ἀποκτιννύναι δὲ μηδὲν τῶν γενομένων νεώτερον τριετοῦς, πλὴν εἴ τι γένοιτο παιδίον ἀνάπηρον, ἢ τέρας εὐθὺς ἀπὸ γονῆς· ταῦτα δ' οὐκ ἐκώλυσεν ἐκτιθέναι τοὺς γειναμένους ἐπιδείξαντας πρότερον πέντε ἀνδράσι τοῖς ἔγγιστα οἰκοῦσιν, ἐὰν κἀκείνοις συνδοκῇ· κατὰ δὲ τῶν μὴ πειθομένων τῷ νόμῳ ζημίας ὥρισεν ἄλλας τε, καὶ τῆς οὐσίας αὐτῶν τὴν ἡμίσειαν εἶναι δημοσίαν."*

From the foregoing passage it appears that the regulations of Romulus in some respects resembled those of Lycurgus, and were adapted to a military people, to whom bodily strength in man was a necessary qualification for the defence of the state, and to whom it was also of importance for the number of males to exceed that of females. The right, then, to expose children was at once granted to parents, and subjected to regulations, at Sparta and Rome. But we are quite ignorant what were the restrictions upon the same right, or, indeed, whether there were any, among the Athenians, in the constitution of whose government there are fewer traces of the military character than we find in the law ascribed to Lycurgus and Romulus.

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* Dionys. Halicarnass. lib. ii. p. 88. edit. Sylburg.

INSCRIPTIONS.

"Concerning Inscription-writing, my opinions are founded upon a diligent and critical inspection of what has been published by Sponius, Reinesius, Fabretti, Gruter, Muratorius, and Morcellus. The latter has written one of the most elegant and judicious books I ever read: and he moreover has published a volume of Inscriptions written by his own pen, in conformity to his own rules. None of the common classical writers are of much use; and indeed I venture upon monumental phraseology, for which no example is to be found in their works."

So says Dr. Parr himself.

The Inscriptions are arranged according to the dates of composition.

THOMAE · THACKERAY · S · T · P.
COLL · REGAL · APVD · CANTABR · OLIM · SOCIO
CHISSELIAE · PARVAE · ATQVE · HAYDONIAE
IN · AGRO · ESSEXIENSI · RECTORI
FREDERICO · PRINCIPI · VALLIAE · A · SACRIS
ARCHIDIACONO · SOVTHRIENSI
SCHOLAE · HARROVIENSIS · PER · XV · ANNOS · MAGISTRO
VIRO · INTEGERRIMO · SANCTISSIMO
ET · AD · IVVENTVTEM · LIBERALITER · ERVDIENDAM
STVDIIS OPTIMARVM · ARTIVM · ET · SVAVITATE · MORVM
EGREGIE · INSTRVCTO
QVI
CONIVGE · SVI · AMANTISSIMA
LIBERIS · QVE · XIV · SVPERSTITIBVS
DECESSIT · LONDINI · VII · CAL · OCTOBR.
ANNO · DOMINI · M · DCC · LX · AETATIS · LXVII
ET · IN · SEPVLCRETO · HVIVS · ECCLESIAE
A · LATERE · OCCIDENTALI · CONDITVS · EST
NEPOTES · EIVS
LL·M · HOC · MONIMENTVM · POSVERVNT

DIE · VENERIS · SEPTIMAM · AD · HORAM · ID · IVN.
MORTEM · SIBI · INVITVS · CONTVLIT · CATAPVLTAE
NIMIRVM · ICTV · CONFECTVS
CAROLVS · WILLIAMS · SCHOLAE · ETONENSIS · OLIM · ALVMNVS
TRIN · AVL · CANT · TANTVM · SOCIO - COMMENSALIS
ANNO · DOMINI · M · DCC · LXVI · AETATIS · SVAE · XX
FORTVNA · IVVENIS · AMPLISSIMVS
FORMA · PVLCHERRIMVS
MORIBVS · OPTIMVS
VIXIT · OMNIBVS · AMABILIS
CECIDIT · OMNIBVS · DEFLENDVS
DIE · LVNAE · SEQVENTI · TEMPLO · SANCTI · EDWARDI
INHVMATVS · EST · CIRCVM · HORAM · VNDECIMAM
G · HALLIFAX · LL · PROFESSORE · ET · COLLEGII · IPSIVS
TVTORE · PRECES · LEGENTE

☧

THOMAS · NELSON · A · M.
VIR · FRVGI · INTEGERRIMVS
SACERDOTALIBVS · IN · HAC · ECCLESIA · MVNERIBVS
IN · EXEMPLVM · PERFVNCTVS
ET · DE · SVCCESSORIBVS · SVIS · QVORVM · REDITVS
AVGENDOS · CVRAVERAT · B · M.
DECESSIT · PRID · NON · OCTOB.
ANNO · SACRO · M̄ · D̄C̄C̄ · L̄X̄X̄.
AETAT · SVAE · L̄X̄Ī.

H · S · E.
ROBERTVS · SVMNER · S · T · P.
COLL · REGAL · APVD · CANTAB · OLIM · SOCIVS
SCHOLAE · HARROVIENSIS · HAVD · ITA · PRIDEM · ARCHIDIDASCVLVS
FVIT · HVIC · PRAESTANTISSIMO · VIRO
INGENIVM · NATVRA · PERACRE
OPTIMARVM · DISCIPLINIS · ARTIVM
SEDVLO · EXCVLTVM · VSV · DIVTVRNO · CONFIRMATVM
ET · QVODAMMODO · SVBACTVM
NEMO · ENIM · AVT · IN · RECONDITIS · SAPIENTIAE · STVDIIS
ILLO · SVBTILIOR · EXTITIT
AVT · HVMANIORIBVS · LITTERIS · LIMATIOR
NEMINI · FERE · VEL · FELICIVS · CONTIGIT · IVDICII · ACVMEN
VEL · VBERIOR · ERVDITIONIS · COPIA
EGREGIIS · HISCE · CVM · DOTIBVS · NATVRAE
TVM · DOCTRINAE · SVBSIDIIS
INSVPER · ACCEDEBANT
IN · SCRIPTIS · VERA · ET · PROPE · PERFECTA · ELOQVENTIA
IN · SERMONE · FACETIARVM · LEPOR · PLANE · ATTICVS
ET · GRAVITATI · SVAVITER · ASPERSA · VRBANITAS
IN · MORIBVS · SINGVLARIS · QVAEDAM · INTEGRITAS · ET · FIDES
VITAE · DENIQVE · RATIO · CONSTANS · SIBI
ET · AD · VIRTVTIS · NORMAM
DILIGENTER · SEVERE · QVE · EXACTA
OMNIBVS · QVI · VEL · AMICO · ESSENT · EO
VEL · MAGISTRO · VSI
DOCTRINAE · INGENII · VIRTVTIS
TRISTE · RELIQVIT · DESIDERIVM
SVBITA · EHEV · ATQVE · IMMATVRA · MORTE · CORREPTVS
PRID · ID · SEPTEMBR.
A · D · $\overline{M}$ · $\overline{DCC}$ · $\overline{LXXI}$.
AET · SVAE · $\overline{XLI}$.

EST · HIC · LIBER
MVLTIPLICI · DOCTRINA
PVRA · QVE · ETIAM · PIETATE · PLENISSIMVS
VIROEVM · CONTINET · OPTIMORVM
DE · REBVS · GRAVISSIMIS
GENVINAS · (VTI · AIVNT) · ATQVE
ΑΚΙΒΔΗΛΟΥΣ
SENTENTIAS · QVAE · PROFECTO · ET · MIHI
SEMPER · CORDI · FVERVNT
PRAECEPTIS · QVE · CHRISTI · IPSIVS
APTISSIME · CONGRVVNT
TERT · KAL · NOV · $\overline{M}$ · $\overline{DCC}$ · $\overline{LXXXIII}$.

☧

IACOBO · IOHNSTONE · IVN.
QVI · IN · HAC · VRBE · PER · IX · ANNOS
ARTEM · MEDICAM · EXERCVIT
ET · DVM · AEGRIS · IN · CARCERE · INCLVSIS
OPEM · FEREBAT
FEBRIS · IBI · SAEVIENTIS · CONTAGIONE · CORREPTVS
DECESSIT · XVII · KALEND · SEPT.
ANNO · CHRISTI · M · DCC · LXXXIII.
AETAT · SVAE · XXX.
IACOBVS · IOHNSTONE · M · D.
FIL · B · M · F · C.

IOANNI · TAYLOR · S · T · P.
LANGOVICI · NATO
ALBI · OSTII · IN · AGRO · CVMBRIENSI
BONIS · DISCIPLINIS · INSTITVTO
NORVICI
AD · EXEQVENDVM · MVNVS · PASTORIS · DELECTO
A . D · M · DCC · XXXIII.
RIGODVNI · QVO · IN · OPPIDO
SENEX · QVOTIDIE · ALIQVID · ADDISCENS
THEOLOGIAM · ET · PHILOSOPHIAM · MORALEM · DOCVIT
MORTVO
TERT · NON · MART.
ANNO · DOMINI · M · DCC · LXI.
AETAT · LXVI.
VIRO · INTEGRO · INNOCENTI · PIO
SCRIPTORI · GRAECIS · ET · HEBRAICIS · LITTERIS
PROBE · ERVDITO
VERBI · DIVINI · GRAVISSIMO · INTERPRETI
RELIGIONIS · SIMPLICIS · ET · INCORRVPTAE
ACERRIMO · PROPVGNATORI
NEPOTES · EIVS · ATQVE · PRONEPOTES
IN · HAC · CAPELLA
CVIVS · ILLE · FVNDAMENTA · OLIM · IECERAT
MONIMENTVM · HOCCE · HONORARIVM
PONI · CVRAVERVNT

A · ☧ · Ω

SAMVELI · IOHNSON
GRAMMATICO · ET · CRITICO
SCRIPTORVM · ANGLICORVM · LITTERATE · PERITO
POETAE · LVMINIBVS · SENTENTIARVM
ET · PONDERIBVS · VERBORVM · ADMIRABILI
MAGISTRO · VIRTVTIS · GRAVISSIMO
HOMINI · OPTIMO · ET · SINGVLARIS · EXEMPLI
QVI · VIXIT · ANN · LXXV · MENS · II · DIEB · XIIII.
DECESSIT · IDIB · DECEMBR · ANN · CHRIST · CIↃ · IↃCC · LXXXIIII.
SEPVLT · IN · AED · SANCT · PETR · WESTMONASTERIENS.
XIII · KAL · IANVAR · ANN · CHRIST · CIↃ · IↃCC · LXXXV.
AMICI · ET · SODALES · LITTERARII
PECVNIA · CONLATA
H · M · FACIVND · CVRAVER..

ΕΝΜΑΚΑΡΕΣΣΙΠΟΝΩΝΑΝΤΑΞΙΟΣΕΙΗΑΜΟΙΒΗ

FACIEBAT
IOHANNES · BACON · SCVLPTOR
ANN · CHRIST · M · DCC · LXXXXV.

☧

IOANNI · BAYNES · A · M.
COLLEGII · S · TRINITATIS · APVD · CANTABRIGIENSES · SOCIO
IVVENI · DISERTO · ET · SINE · MALEDICTIS · FACETO
VI · INGENII · AD · EXCOGITANDVM · ACVTA
ET · FIRMA · AD · MEMORIAM · MIRIFICE · PRAEDITO
GRAECIS · ET · LATINIS · LITERIS · PENITVS · IMBVTO
LEGVM · ANGLICARVM · INTERIORI
ET · RECONDITA · DISCIPLINA · ERVDITO
LIBERTATIS · CONSERVANDAE · PERSTVDIOSO
PATRIAE · BONORVM · QVE · CIVIVM · AMANTISSIMO
SIMPLICI · IVSTO · ET · PROPOSITI
ANIMOSE · ET · FORTITER · TENACI
QVI · VIXIT · ANN · XXVIII · MENS · III · DIEB · XXVIII.
DECESSIT · LONDINI · PRIDIE · NON · AVGVST.
ANNO · SACRO
M · DCC · LXXXVII.
GVLIELMVS · BAYNES
CONTRA · VOTVM · SVPERSTES
FILIO · BENE · MERENTI
H · M · P.

FREDERICO · COMMERELL
VIRO · PROBO · MITI · OMNIBVS · AFFABILI
QVI
HEILBRANII · IN · GERMANIA · HONESTA · STIRPE · ORIVNDVS
ET · INTER · ANGLIAE · CIVES · CONSCRIPTVS
RES · MERCATORIAS
DILIGENTER · ET · FIDELITER · ADMINISTRAVIT
RVRI · TRANQVILLE · PLACIDE · QVE · CONSENVIT
DIEM · SVPREMVM · OBIIT
PRIDIE · ID · APRIL.
ANNO · CHRISTI · M · DCC · LXXXVIII.
AETAT · SVAE · LXXXII.
ET · SEPVLTVS · EST · IN · HOC · TEMPLO
QVOD · PIE · SANCTE · QVE
VIVVS · FREQVENTAVERAT
IOANNES · GVLIELMVS · COMMERELL
FILIVS · SVPERSTES
PATRI · BENE · MERENTI
H · M · PONI · CVRAVIT

H · S · V · M · N.
HENRICVS
EDVARDI · ET · MARIAE · DAWSON · FIL · NATV · MAX.
QVI · VIXIT · ANN · XVIII · M · II · D · VI.
RELICTIS
EDVARDO · FRATRE · ET · MARIA · SORORE · MOESTISSIMIS
OB · PRID · NON · MART.
A · D · M · DCC · LXXXIX.

IOANNI · ANDREWS · M · D.
VIRO · DOCTO · PROBO
IN · SVOS · HOSPITALI
ERGA · INOPES · MVNIFICO
QVI · OB · QVINTO · ID · JAN.
AETAT · SVAE · LXXV.
THOMAS · SARA · ANNA · ET · MARIA
ET · ISABELLA · LOSH
AVVNCVLO · B · M.
H · M · D · S · F.

A · ☧ · Ω

LAETITIAE

THOMAE · ET · LAETITIAE · WEARDEN · FIL · NAT · MAX.

QVAE · VIXIT · ANN · XXXVII · MENS · III · DIEB · XXVIII.

DECESSIT · QVART · KALEND · APRIL.

ANNO · SACRO · M · DCC · LXXXIII.

CATHARINA · SOROR · EIVS · VNICA · ET · SVPERSTES

ET · CONIVX · EDVARDI · IOHNSTONE · M · D.

MONIMENTVM · HOC · MARMOREVM

ET · FENESTRAM · EI · SVPERADDITAM

D · S · I · F · C.

FELICI · VAVGHAN
COLL · IESV · CANTABR · OLIM · ALVMNO
VIRO · INTER · AMICOS · COMI · VRBANO · SIMPLICI
CAVSARVM · ACTORI · DISERTO
ET · LEGVM · ANGLICARVM · EXIMIE · PERITO
LIBERTATIS · VINDICI · ACERRIMO
IVSTITIAE · VERITATIS · QVE
SANCTO · ET · SINCERO · CVLTORI

EDVARDO · BROWNE
DE · OSWESTRY · IN · COMITATV · SALOPIENSI
ARMIGERO
QVI · VIXIT · ANN · LXXX.
DECESSIT · VIII · KALEND · MART.
ANNO · SACRO · M · DCC · LXXXXIV.
SARA · CONIVX · THOMAE · NETHERTON · PARKER
HAERES · EIVS · EX · ASSE
PIO · GRATO · QVE · ANIMO
IN · AVVNCVLVM · OPTIME · DE · SE · MERITVM
HOC · MONIMENTVM
FACIVNDVM · CVRAVIT

EDVARDVS · GIBBON
CRITICVS · ACRI · INGENIO · ET · MVLTIPLICI · DOCTRINA · ORNATVS
IDEM · QVE · HISTORICORVM · QVI · FORTVNAM
IMPERII · ROMANI
VEL · LABENTIS · ET · INCLINATI · VEL · EVERSI · ET · FVNDITVS · DELETI
LITTERIS · MANDAVERINT
OMNIVM · FACILE · PRINCEPS
CVIVS · IN · MORIBVS · ERAT · MODERATIO · ANIMI
CVM · LIBERALI · QVADAM · SPECIE · CONIVNCTA
IN · SERMONE
MVLTAE · GRAVITATI · COMITAS · SVAVITER · ADSPERSA
IN · SCRIPTIS
COPIOSVM · SPLENDIDVM
CONCINNVM · ORBE · VERBORVM
ET · SVMMO · ARTIFICIO · DISTINCTVM
ORATIONIS · GENVS
RECONDITAE · EXQVISITAE · QVE · SENTENTIAE
ET · IN · MOMENTIS · RERVM · POLITICARVM · OBSERVANDIS
ACVTA · ET · PERSPICAX · PRVDENTIA
VIXIT · ANNOS · $\overline{\text{LVI}}$ · MENS · $\overline{\text{VII}}$ · DIES · $\overline{\text{XXVIII}}$.
DECESSIT · $\overline{\text{XVII}}$ · KAL · FEB · ANNO · SACRO
$\overline{\text{M}}$ · $\overline{\text{DCC}}$ · $\overline{\text{LXXXXIV}}$.
ET · IN · HOC · MAVSOLEO · SEPVLTVS · EST
EX · VOLVNTATE · IOHANNIS · DOMINI · SHEFFIELD
QVI · AMICO · BENE · MERENTI · ET · CONVICTORI · HVMANISSIMO
H · TAB · D · S · S · P · C.

IN · MEMORIAM
GVLIELMI · LEGGE · ANGLI
GVLIELMI · COMITIS · DE · DARTMOVTH
FILII · NATV · SECVNDI
ET · GEORGII · WALLIAE · PRINCIPIS · EX · CAMERARIIS
QVI · IN · HAC · VRBE · [GENEVA]
OB · PECTORIS · LENTE · TABESCENTIS · INIVRIAM
ALIQVAMDIV · COMMORATVS
HINC · AD · SEDES · AETERNAS
DEO · IVBENTE
TANDEM · EVASIT
DIE · VICESIMO · OCTOBRIS
ANNO · DOMINI · M · DCC · LXXXIV.
AETAT · XXVIII.

A · ☧ · Ω

IOANNI · SMITHEMAN

QVI · VIX · ANN · XV · MENS · VIIII · DIEB · XVII · HOR · III.

DECESSIT · VIII · ID · MART · ANNO · SACRO

cIↃ · IↃCC · LXXXIIII.

IOANNES · ET · MARGARETA · SMITHEMAN

PARENTES · INFELICISSIMI

VNICO · ET · CARISSIMO · FILIO

H · M.

CONTRA · VOTVM · POSVERVNT

IOSEPHO · BALDWIN
SAMVELIS · ET · TRYPHAENAE · BALDWIN · FIL · NAT · MAX.
SCHOLAE · HARROVIENS · ALVMNO
VIRO · ERVDITO · PROBO · INTEGRO
IN · NEGOTIIS · ADMINISTRANDIS · DILIGENTI · SOLERTI · QVE
IN · AMICITIIS · TVENDIS · FIDELI
QVI · VIXIT · ANN · LXXIV · MENS · VII · DIEB · XXVII.
DECESSIT · ID · MART · ANNO · SACRO · M · DCCC.
ET · LONDINI · IN · AEDE · SANCTI · PAVLI
AD · HORTVM · COENOBII · SITA · SEPVLTVS · EST
ANNA · OPTIMO · MARITO
H · M · P.

TRYPHAENA
IOSEPHI · ET · ANNAE · BALDWIN · FILIA
OBIIT · IV · KAL · FEB.
A · D · M · DCC · LXXXXVI.
AETAT · SVAE · XXXX.
ET · CONDITA · EST · IN · SACELLO · SANCTI · LEONARDI

MARIAE · GREENE
FIL · NAT · MIN · ADAMI · BLAND
ET · VXORI · MORDECAI · GREENE
QVAE · VIXIT · ANN · LXXVIII · DIEB · VI.
DECESSIT · XI · KAL · MAII
ANNO · SACRO · M · DCC · LXXXXVI.
ET · IN · HOC · SACELLO · CONDITA · EST
IACOBVS · GREENE · FILIVS · SVPERSTES
M · B · M · H · M · P.

RICHARDO · WARREN
APVD · CAVENDISH · IN · AGRO · SVFFOLCIENSI · NATO
COLLEGII · IESV · CANTAB · QVONDAM · SOCIO
REGIS · GEORGII · TERTII · MEDICO
VIRO · INGENIO · PRVDENTIA · QVE · AVCTO
OPTIMARVM · ARTIVM · DISCIPLINIS · ERVDITO
COMITATIS · ET · BENEFICENTIAE · LAVDE
BONIS · OMNIBVS · COMMENDATISSIMO
QVI · MEDICINAM · DIV · FELICITER · QVE
LONDINI · FACTITAVIT
DECESSIT · X̄ · KAL · IVL.
ANNO · CHRISTI · M̄ · D̄C̄C̄ · X̄C̄VIĪ.
AETAT · SVAE · L̄X̄VĪ.
ELIZABETHA · VXOR
ET · LIBERI · DECEM · SVPERSTITES
H · M · FACIVNDVM · CVRAVERVNT

EDMVNDO · BVRKE
VIRO
MVLTIS · ET · EXQVISITIS · LITTERIS · IMBVTO
ET · SVMMA · INGENII · PRAEDITO · GLORIA
SODALI
SVIS · AMABILI
ET · IN · OMNI · GENERE · FACETIARVM · ORNATISSIMO
CIVI
QVI · REMPVBLICAM · PROPRIAM · BRITANNORVM
IDCIRCO · ESSE · OPTIMAM · STATVEBAT
QVOD · REGALIS · SENATORII · POPVLARIS · QVE · IVRIS
CONSENSV · FVNDATA · ESSET
ET · COMMVNIONE · VTILITATIS · STABILITA
CRITICO
QVI · E · RECONDITA · VI · VERBORVM · QVOTIDIANORVM
QVOD · AVT · VERVM · EST
AVT · AD · ID · QVAM · PROXIME · ACCEDIT
ACVTE · ARGVTE · QVE · ELICVIT
INTIMOS · QVOSDAM · ANIMI · SENSVS · PATEFECIT
ET · ADVMBRATAS · IN · EODEM · A · NATVRA
RERVM · IMAGINES
MVLTO · EXPRESSIORES · DEFINIENDO · ET · EXPLICANDO · REDDIDIT
PHILOSOPHO
QVI · MVLTIPLICES · ET · ABSTRVSAS · REI · POLITICAE · RATIONES
CVM · DISCIPLINA · MORALI · CONIVNCTAS
VBERRIME · ET · GRAVISSIME · ILLVSTRAVIT
ORATORI
QVI · COPIOSE · ERVDITE · SPLENDIDE · DICENDO · EFFECIT
VT · OMNES · ARTES · SE · PRAEBERENT
COMITES · ELOQVENTIAE · AC · MINISTRAS
QVI · VIXIT · ANN · $\overline{\text{LXVII}}$ · MENS · $\overline{\text{V}}$ · DIES · $\overline{\text{XXVII}}$
DECESSIT · $\overline{\text{VIII}}$ · ID · QVINTIL · ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCC}}$ · $\overline{\text{LXXXXVII}}$
ET · BEACONSFIELDIAE · IN · AGRO · BVCKINGENSI
SEPVLTVS · EST
REX · SENATVS · QVE · BRITANNICVS
H · M · P · P · IMPEN · PONENDVM · IVSSERVNT

ELIZABETHAE
CAROLI · DOMINI · DORMER
FEMINAE · PVLCHERRIMAE
MATRI · PIENTISSIMAE
QVAE · VIXIT · ANN · LXVIIII.
MENS · III · DIES · XIIII.
DECESSIT · VII · KALEND · OCTOBR.
ANNO · SACRO · M · DCC · LXXXXVII.
IOANNES · STANHOPE · DORMER
ET · FRANCESCA · CONIVX · ROBERTI · KNIGHT
LIBERI · EIVS · NATV · MINIMI
H · M · SVA · IMPENSA
PONENDVM · CVRAVERVNT

A · ☧ · Ω

RICARDVS · FARMER · S · T · P.
MAGISTER · HVIVS · COLLEGII
VIR · FACETVS · ET · DVLCIS
FESTIVI · QVE · SERMONIS
GRAECE · ET · LATINE · DOCTVS
SVBTILIS · ATQVE · ELEGANS
IN · POESI · VETERVM · ANGLORVM · EXPLICANDA
ACADEMIAE · CANTABRIGIENSIS · STABILIENDAE
ET · AMPLIFICANDAE · STVDIOSVS
REGIS · ET · PATRIAE · AMANTISSIMVS
VIXIT · ANN · LXII · MENS · III · DIES · XIIII.
DECESSIT · SEXTO · ID · SEPTEMBR.
ANNO · SACRO · M · DCC · LXXXXVII.
ET · CONDITVS · EST · IVXTA · ARAM · VICINI · SACELLI
IN · SEPVLCRO · QVOD · SIBI · VIVVS · NVNCVPAVERAT

☧

CATHARINAE · MACKINTOSH
FEMINAE · PVDICAE · FRVGI · PIAE
MATRIFAMILIAS
VIRI · TRIVM · QVE · FILIARVM
QVOS · SVPERSTITES · SVI · RELIQVIT
AMANTISSIMAE
VIXIT · ANN · XXXII · MENS · XI · DIEB · XXI.
FECIT · CVM · MARITO · ANN · VIII · MENS · I · DIEB · XXI.
DECESSIT · SEXTO · ID · APRIL · ANNO · SACRO
M · DCC · XCVII.
IACOBVS · MACKINTOSH
H · M · CON · B · M · P.
SPERANS · HAVD · LONGINQVVM
INTER · SE · ET · CATHERINAM · SVAM
DIGRESSVM · FORE
SIQVIDEM · VITAM · NOBIS · COMMORANDI · DIVERSORIVM
NON · HABITANDI
DEVS · IMMORTALIS · DEDIT

EDVARDO · BARETTI
VIRO · INNOCENTI · SIMPLICI · INTEGERRIMO
NATVRA · VSV · QVE · ACVTO
SALE · FACETIIS · QVE · AMICIS · IVCVNDISSIMO
IN · SVSCEPTIS · CONSILIIS · GRAVI · ET · CONSTANTI
DIVITIARVM · NON · VT · SECVM · AVT · MAGNIFICE
SED · RECTE · VIVERET
MODICE · CVPIDO
QVI · FILIORVM · QVOS · VALDE · AMAVIT
TRIVM · SVPERSTES
DECESSIT · XVI · KALEND · DECEMB.
ANNO · SACRO · M · DCC · LXXXXVIII.
AETAT · SVAE · LXIIII.
CONIVGI · B · M.
H · M · SVA · IMPENSA
FACIVNDVM · CVRAVIT

M · S.

IN · HAC · ECCLESIA · CONDITORVM

IOANNIS · TWEDDELL · QVI · OB · PRID · OCTOBR.

A · D · M · DCCC · V · AET · LXXV.

ET · IANAE · TWEDDELL · QVAE · OB · VIII · KAL · AVGVST.

A · D · M · DCCC · II · AET · LV.

ITEM · QVE · IOANNIS · TWEDDELL

FILII · EORVM · NATV · MAXIMI

ET · COLLEG · SACROSANCT · TRINITAT

APVD · CANTABRIGIENSES

SOCII · QVI · ATHENIS · OB · XIII · KAL · DECEMBR.

A · D · M · DCC · LXXXXVIIII · AETAT · XXX.

ET · IN · TEMPLO · THESEI · IBIDEM · SEPVLTVS · EST

ROBERTVS · TWEDDELL

PARENTIVM · ET · FRATRIS · CARISSIMORVM · SVPERSTES

H · M · P · C.

☧

HONORATIS · ET · NOBILIBVS · VIRIS
DVNBAR · ET · ALEXANDRO · DOVGLAS
FILIIS · DVNBAR · COMITIS · DE · SELKIRK
QVORVM · HIC
DVM · IN · LEG · XXXVIII · PEDIBVS · MEREBAT
PESTE
QVAE · IN · GAVDALOVPIAE · INCOLAS · INGRVERAT · CORREPTVS
IBI · DECESSIT · VII · ID · IVN.
ANNO · DOMINI · M · DCC · LXXXXIV.
AETAT · XXVI.
ET · AD · STATIONEM · SVAM · CONDITVS · EST
ILLE
A · BELLO · QVOD · EXARSERAT
IVDICIO · QVIDEM · ET · VOLVNTATE · ABHORRENS
SED · AB · RELIGIONE · OFFICII · MILITARIS · NON · DECLINANS
CVM · NAVICVLAE · ANGLICE · DICTAE
THE · TERROR · BOMB-KETCH · PRAEESSET
ET · IN · MORBI · QVI · HANC · INSVLAM · INVASERAT
CONTAGIONEM · INCIDISSET
OBIIT · IV · KAL · NOVEMB.
ANNO · DOMINI · M · DCC · LXXXXVI.
AETAT · XXVIIII.
ET · HIC · SITVS · EST
THOMAS · COMES · DE · SELKIRK
FRATRIBVS · SE · NATV · MAIORIBVS
ET · SIBI · CARISSIMIS
HOC · MONIMENTVM
PONENDVM · CVRAVIT
ANNO · DOMINI · M · DCCC.

M · S.
IOSEPHI · WARTONI
ETC.
SI · QVIS · ALIVS
INTER · EGREGIOS · MEMORANDI
PROPTER · BENEVOLENTIAM · MORVM · SVAVITATEM
OMNIBVS · DILECTI
AMICIS · OB · FESTIVITATEM · SERMONIS
ANIMI · CANDOREM
IN · DELICIIS · HABITI
SCRIPTORIBVS · ANTIQVIS · SIMVL
ATQVE · RECENTIORIBVS · EXAMINANDIS
INTERPRETANDIS · IMITANDIS
VEL · DOCTORVM · IVDICIO
SINGVLARIS · SCIENTIAE
QVANTA · INSVPER · CVM · CVRA · AEQVITATE
LENITATE · DILIGENTIA
VSQVE · AD · SENECTVTEM
MVNERE · GRAVISSIMO · INFORMATORIS
PERFVNCTVS · SIT · WARTONVS
HOCCE · MONIMENTVM
DISCIPVLORVM · IMPENSIS · STRVCTVM
POSTERIS · TESTETVR

H · S · E.
IOSEPHVS · WARTON · S · T · P.
HVIVS · ECCLESIAE
PREBENDARIVS
SCHOLAE · WINTONIENSIS
PER · ANNOS · FERE · TRIGINTA
INFORMATOR
POETA · FERVIDVS · FACILIS · EXPOLITVS
CRITICVS · ERVDITVS · PERSPICAX · ELEGANS
OBIIT · XXIII · FEB · M · DCCC.
AETAT · LXXVIII.
HOC · QVALECVNQVE
PIETATIS · MONIMENTVM
PRAECEPTORI · OPTIMO
DESIDERATISSIMO
WICCAMICI · SVI
P · CC.

AEDES · HASCE
QVOD · FELIX · FAVSTVMQVE · SIT
DE · SVA · PECVNIA
REFECIT · AMPLICAVIT · QVE
FRANCISCVS · WRANGHAM
VICARIVS
ANNO · SACRO · M · DCCC · II.

IACOBO · IOHNSTONE
QVI · PER · ANNOS · $\overline{\text{LI}}$.
IN · AGRO · VIGORNIENSI
ARTEM · MEDICAM · PERITISSIME · EXERCVIT
MAGNAM · INGENII · ET · DOCTRINAE · FAMAM
SCRIPTIS · SVIS · ATQVE · ETIAM · INVENTIS · ASSECVTVS · EST
VIXIT · ANN · $\overline{\text{LXXII}}$.
DECESSIT · $\overline{\text{IV}}$ · KAL · MAII · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{II}}$.
QVINQVE · LIBERI · EIVS · SVPERSTITES
PATRI · DE · SE · OPTIME · MERITO
H · M · F · CC.

IOANNI · IOHNSTONE
VIRO · DOCTO
MEDICO · PERITO
AMICO · OPTIMO
HANC · ERASMI · EFFIGIEM
AB · HOLBENIO · VIA · ET · ARTE · ELABORATAM
D · D · SAMVEL · PARR
QVINTO · KAL · APRIL.
ANNO · SACRO · M · DCCC · II.

M · S.
GVIDONIS · COMITIS · VEROVICANI
QVI
POSTQVAM · DANOS
CONTRA · PATRIAM · EIVS · ARMA · INFERENTES
DEVICERAT
SATIS · QVE · BELLICAE · GLORIAE · SIBI · COMPARAVERAT
IN · CELLAM · HVIC · AEDICVLAE · VICINAM
ET · A · SANCTO · DVBRITIO · ANTEA · HABITATAM
SVA · SPONTE · SE · RECEPIT
VT · QVO · IN · LOCO · CVM · CONSENESCERET
DEO · PIE · COLENDO · SE · TOTVM · DEDIDISSET
IN · EODEM · OSSA · IPSIVS
POST · MORTEM · CONDERENTVR
IMAGINEM · HANCCE
RICARDVS · BEAVCHAMP · COMES · VEROVICANVS
REGNANTE · HENRICO · SEXTO
PONI · CVRAVIT

IN · HOC · LOCO
QVEM · HENRICVS · QVINTVS · INVISERAT
ET · AD · CANTARIAM · A · SE · FVNDANDAM · DESTINAVERAT
RICARDVS · BEAVCHAMP · COMES · DE · WARWICK
REGNANTE · HENRICO · SEXTO
CAPELLAM · POSVIT
ET · ANNVIS · REDITIBVS · LOCVPLETAVIT
IOANNES · ROVS
CVM · IN · COLLEGIVM · CAPELLANORVM · CLIVI . GVIDONICI
FAVENTE · EDVARDO · QVARTO · COOPTATVS · ESSET
CHRONICON · SVVM · DE · REGIBVS · ANGLIAE
IBIDEM · CONSCRIPSIT
ALIOS · QVE · ITEM · LIBROS
QVI · OLIM · DEPERDITI · SVNT
AVT · IN · BIBLIOTHECIS · ETIAM · NVNC · DELITESCVNT
TVRRIM · PROPRIIS · IMPENSIS · EXSTRVENDAM · CVRAVIT
SAMVEL · GREATHEED · A · D · $\overline{\text{M}}$ · $\overline{\text{DCC}}$ · $\overline{\text{LXIV}}$.
BERTIE · GREATHEED · SAMVELIS · FILIVS
AEDICVLAM · IPSAM · REFECIT
A · D · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{II}}$.

ROBERTO · PLVMTRE
VIRO · LIBERALIS · DOCTRINAE · STVDIOSO
IVRIS · ANGLICI · BENE · PERITO
IN · CAVSIS · AMICORVM · AGENDIS · DISERTO
ET · IN · LIBERTATE · CIVIVM · SVORVM
PROPVGNANDA · ACERRIMO
THOMAS · GVLIELMVS · COKE
L · M · D · D.
ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{III}}$.

QVAE · IN · APSIDA · VICINA · INSVNT
SEPTEM · FENESTRAE · PICTVRATAE
COENOBIO · CANONICORVM · HERCHENRODENSI
QVOD · OLIM · EXORNAVERANT
FOEDISSIME · DIREPTO · ATQVE · DIRVTO
NOVAM · ET · DEO · VOLENTE · STABILIOREM · SEDEM
IN · HAC · ECCLESIA · NACTAE · SVNT
OPE · ET · CONSILIO
VIRI · IN · OMNI · IVDICIO · ELEGANTISSIMI
DOM · BROOKE · BOOTHBY · DE · ASHBOVRN · AVLA
IN · COMITAT · DERB · BARONETTI
ANNO · SACRO · M · DCCC · III.

GVLIELMO · VNTHANK
HOMINI · INTEGERRIMO
SVFFRAGATORI · STRENVO
ET · CIVI · SVO · CARISSIMO
THOMAS · GVLIELMVS · COKE
L · M · D · D.
ANNO · SACRO · M · DCCC · III.

THOMAE · TWINING · A · M.
HVIVSCE · ECCLESIAE · RECTORI
VIRO · IN · QVO
DOCTRINA · INERAT · MVLTIPLEX · ET · RECONDITA
INGENIVM · ELEGANS · ET · ACVTVM
SCRIBENDI · GENVS · NON · EXILE · SPINOSVM · QVE
SED · ACCVRATVM · ET · EXQVISITVM
IN · REBVS · QVAE · AD · REM · CRITICAM · PERTINENT · EXPLICANDIS
SERMO · SINE · ACVLEO · ET · MALEDICTIS · FACETVS
ET · SAPORE · PAENE · PROPRIO · ATHENARVM · IMBVTVS
MANSVETVDO · MORVM
ET · COMITAS · SVIS · PERIVCVNDA
PIETAS · ERGA · DEVM · PVRA · ATQVE · SINCERA
SIQVIDEM · HONESTA · DE · EIVS · NATVRA · OPINIONE
STABILI · QVE · IN · CHRISTO · FIDE
POTISSIMVM · NIXA · EST
ET · CVM · SVMMA · IN · OMNES · HOMINES · BENEVOLENTIA
NVNQVAM · NON · CONIVNCTA
RICARDVS · TWINING · FRATRI · CARISSIMO
NATO · $\overline{\text{VIII}}$ · KALEND · IANVAR · A · S · $\overline{\text{M}}$ · $\overline{\text{DCC}}$ · $\overline{\text{XXXV}}$.
MORTVO · $\overline{\text{VIII}}$ · ID · AVG · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{IV}}$.
CONDITO · COLCESTRIAE · IN · SEPVLCRETO · TEMPLI
AD · MILE-END · SITI
H · M · P · C.

CANI
EX · GENERE · EORVM
QVIBVS · NEWFOVNDLANDIA · NOMEN · DEDIT · ORIVNDO
QVONDAM · TIGRI · DICTO
POSTEA · AMICO
NARIVM · SAGACITATE
OCVLORVM · ACIE
VALIDA · TOTIVS · CORPORIS · COAGMENTATIONE
ATQVE · ACERRIMO · ANIMI · VIGORE
AD · OMNIA · QVAE · PRAESTARE · DEBVIT
MVNERA · APTISSIMO
QVI
AD · VIRVM · ANTEA · AB · IPSO · NE · SEMEL · QVIDEM · VISVM
SED · DOMINVM · BREVI · FVTVRVM
CVM · PROLVENDI · SE · GRATIA · PORTESMVTHIAE
IN · MARE · VLTRA · QVAM · OPORTEBAT
NEC · OPINATO · PROGRESSVS · ESSET
NANDI · QVE · IMPERITVS
ET · CONTRA · VNDARVM · IMPETVM · DIV · LVCTATVS
VIRIBVS · IAM · EXHAVSTIS
ET · GRAVI · STVPORE · SENSIBVS · OPPRESSIS
TEMERE · HVC · ILLVC · SVPER · AQVAS · FLVITARET
SVA · SPONTE · ADVOLAVERAT
PRENSATVM · QVE · CRINIBVS
ET · AD · LITTVS · CAVTE · AC · DILIGENTER · DELATVM
EX· INSTANTI · MORTIS · PERICVLO · ERIPVERAT
GVLIELMVS · PHILLIPS
CVSTODI · DOMVS · FIDELI
ET · VITAE · FORTISSIMO · CONSERVATORI
SVPER · OSSA · EIVS · SENIO · EMORTVI
H · M · P · C.
ANNO · SACRO · $\overline{M}$ · $\overline{DCCC}$ · V.

DANIELI · GACHES · A · M.
COLLEGII · REGALIS · APVD · CANTABRIGIENSES
QVONDAM · SOCIO
ECCLESIAE · HVIVSCE · ANN · CIRCITER · XXXVIIII · MINISTRO
IRENARCHAE · DE · COMITATV · VARVICENSI
OPTIME · MERITÓ
SIQVIDEM · AEQVI · ET · BONI · PERITISSIMVS · FVIT
ET · AD · NODOS · LEGVM · SOLVENDOS
QVAM · MAXIME · EXPEDITVS
VIRO
NON · SOLVM · DOCTRINA · LIBERALITER · INSTITVTO
SED · INGENIO · ETIAM · QVOD · ACVTVM · AD · EXCOGITANDVM
ET · AD · MEMORIAM · FIRMVM · ATQVE · DIVTVRNVM · ERAT
EGREGIE · PRAEDITO
QVI · VIXIT · ANN · LXXII · MENS · VI.
DECESSIT · IV · ID · SEPTEMBR.
ANNO · SACRO · M · DCCC · V,
MARIA · GACHES · CONIVX · EIVS · SVPERSTES
H · M · P · S · P · C.

GVLIELMO · PITT
GVLIELMI · COMITIS · DE · CHATHAM · FILIO · NATV · MINORI
GEORGII · TERTII · A · CONCILIIS · SECRETIS
PVBLICI · FISCI · CANCELLARIO
ET · PRINCIPI · AERARII · PROCVRATORI
QVI · IDCIRCO · QVOD · INDOLEM · HABEBAT
IN · PENETRALIBVS · CLARISSIMI · PATRIS · NVTRITAM
ET · IN · IPSO · IVVENTVTIS · FLORE
ADMIRABILI · QVADAM · VI · INGENII · VIGEBAT
ANNVM · AGENS · VICESIMVM · ET · QVINTVM
GRADVM · HONORIS · PROPE · AMPLISSIMVM · OBTINVIT
ET · CVM · INCREDIBILI · CIVIVM · SVORVM
COMPROBATIONE · REMPVBLICAM · CAPESSIVIT
ORATORI · QVI · CVM · IN · SENATVM · AFFERRET
LVMINOSVM · ACTVOSVM · QVE · DICENDI · GENVS
ARTICVLIS · ET · MEMBRIS
SINGVLARI · ARTIFICIO · DISTINCTVM
ET · VERBORVM · CVM · VARIETATE · ET · COPIA
TVM · COMPLETO · ETIAM · ET · PERFECTO · AMBITV · ORNATVM
ANIMI · MOTVS · ET · AD · EXCOGITANDVM · CELERES
ET · AD · MEMORIAM · FIRMOS · ET · DIVTVRNOS
MAXIMVM · IN · VOCE · SPLENDOREM
ET · EXIMIAM · IN · GESTV · DIGNITATEM
SVPERBISSIMO · AVRIVM · SATISFACERE · IVDICIO
ET · VOLVNTATES · HOMINVM · QVO · VELLET
FLECTERE · ET · IMPELLERE · POTVIT
DISPENSATORI · PVBLICAE · PECVNIAE
FIDELI · ET · APPRIME · INTELLIGENTI
REGIS · POPVLI · QVE · BRITANNICI
CONTRA · NEBVLONVM · NOVIS · REBVS · STVDENTIVM

PRAESTIGIAS · ET · EFFRAENATVM · FVROREM
VIGILANTI · STRENVO · QVE · VINDICI
GALLORVM · QVOTQVOT · VEL · ARGVTIARVM · TENDICVLIS
FVCATO · QVE · ELOQVENTIAE · NITORE
VEL · TVMVLTV · ATQVE · ARMIS
SVMMA · CVM · INFIMIS · PARIA · FACERE
ET · SACRA · PROFANIS · MISCERE · CONARENTVR
ACERRIMO · INIMICO
ACADEMIAE · CANTABRIGIENSIS
DOCTISSIMO · AMANTISSIMO · QVE · ALVMNO
ECCLESIAE · ANGLICAE
DILIGENTI · ET · OFFICIOSO · FAVTORI
HOMINI · QVI · A · DIVITIIS · CONQVIRENDIS
MANVS · OCVLOS · MENTEM · ABSTINVIT
ILLECEBRIS · BLANDAE · VOLVPTATIS
DELINIRI · NOLVIT
ET · HONORIBVS TOT · TAM · QVE · AMPLIS
QVOS · IN · ADOLESCENTIA · NON · SOLVM · DATOS · SIBI
SED · CREDITOS · QVOQVE · ET · COMMISSOS · ESSE
EXISTIMAVERAT
PER · OMNE · CVRRICVLVM
INDVSTRIAE · ET · CONSTANTIAE · SVAE
DIGNISSIMVM · SE · PRAESTITIT
AMICI · EIVS · ACADEMICI
EX · AERE · COLLATO
HANC · STATVAM · PONENDAM · CVRAVERVNT

GVLIELMVS · PITT
AVLAE · PEMBROKIANAE · QVONDAM · ALVMNVS
ACADEMIAE · HVIVSCE · SEXTVM · CREATVS · BVRGENSIS
A · D · M · DCCC · IV.
SENESCHALLVS · EIVSDEM · COMMVNI · CONSENSV · FACTVS
A · D · M · DCC · LXXXX.
SCACCARII · CANCELLARIVS
DOMINVS · PRIMARIVS · FISCI
REGIAE · MAIESTATI
A · SANCTIORIBVS · CONCILIIS · ET · A · SECRETIS
DECESSIT · DECIMO · KAL · FEBR · A · D · M · DCCC · VI.
AETAT · XLVII.

TALIS · VIRI · GRATE · ET · PIE · MEMORES
CANTABRIGIENSES · OMNIVM · ORDINVM
COLLATA · PECVNIA · POSVERVNT
ANNO · SACRO · M · DCCC · XII.

THOMAE · PERCIVAL
SCRIPTORI · CVIVS · OPERA · PERMVLTA · ET · PERPOLITA
PROBITATE · IPSIVS · ET · MORIBVS
AD · OMNEM · MEMORIAM · COMMENDATA · SVNT
MEDICO · RECTISSIMIS · STVDIIS
MAGNA · QVE · PRVDENTIA · ET · EXERCITATIONE · PRAEDITO
LIBERTATIS · SINE · VLLIS · VERBORVM · PRAESTIGIIS
AVT · LVBRICA · ET · PRECIPITI · RERVM · NOVARVM · CVPIDITATE
ACERRIMO · VINDICI
MORBORVM · SOLLERTER · ATQVE · HVMANE · CVRANDORVM
ET · VITAE · SAPIENTER · HONESTE · QVE · INSTITVENDAE
DOCTISSIMO · AC · SANCTISSIMO · PRAECEPTORI
QVI · VIXIT · ANNOS · $\overline{\text{LXIII}}$ · MENSES · $\overline{\text{XI}}$ · DIEM · $\overline{\text{I}}$.
DECESSIT · TERTIO · KALEND · SEPTEMBR.
ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{IV}}$.
ELIZABETHA · PERCIVAL · CONIVX · EIVS · PIENTISSIMA
ET · NOVEM · LIBERI · SVPERSTITES
PATRIS · DE · SE · OPTIME · MERITI
H · M · P · CC.

THOMAE · PERCIVAL
QVI · NON · SOLVM · AD · SOCIETATEM · MANCVNIENSEM
CONSTITVENDAM
CONSILIO · HORTATV · AVCTORITATE
INCVBVIT
SED · CONSTITVTAM
ANIMO · ERVDITO
SCRIPTIS · ELEGANTISSIMIS
SINGVLARI · MORVM · COMITATE
MVLTVM · ET · DIV · ORNAVIT
SODALES · EIVS · SVPERSTITES
HANC · MARMOREAM · TABELLAM
D · S · I.
P · CC.

GEORGIO · COMITI · DE · MACARTNEY
VICE · COMITI · DE · DERVOCK
BARONI · DE · LISSANOORE · ET · PARKHVRST
A · SACRIS · GEORGIO · TERTIO · BRITANNIARVM · REGI
ORDINE · EQVESTRI · AQVILAE · ARGENTEAE
A · STANISLAO · AVGVSTO · REGE · POLONIAE · ORNATO
IDEM · QVE · APVD · ANGLOS · SVOS · IVSSV · REGIO
IN · ORDINEM · BALNEI · ASCRIPTO
QVI
PRIMVM · AD · LADOGAE · PALVDEM
DEINDE · AD · OCCIDENTALES · CYCLADAS
POSTEA · IN · SACRATI · GANGIS · PENINSVLA
PRAETEREA · IN · IOVIS · HAMMONIS · FINIBVS
DENIQVE · INTER . EXTREMOS · SERAS
MAGNA · ET · HONESTISSIMA · MVNERA
PRVDENTER · STRENVE · FIDELITER · IMPLEVIT
VIXIT · ANNIS · LXIX · MENS · VIII.
DECESSIT · LONDINI · PRID · KAL · MART.
ANNO · SAC · M · DCCC · VI.
ET · IN · SVBVRBANIS · SEPVLTVS · EST
ELIZABETHA · HVME · NEPTIS · EIVS · AMANTISSIMA
HOC · MONIMENTVM · HONORARIVM
P · C.

HANC · AEDEM
LIBERTATI · SACRAM
ET · A · VIRO · PATRIAE
BONORVM · QVE · CIVIVM · AMANTISSIMO
FRANCISCO · RVSSELL · BEDFORDIAE · DVCE · INCHOATAM
IOANNES · RVSSELL · HAERES · EIVS
EX · VOLVNTATE · FRATRIS · MORIENTIS
PERFICIENDAM · CVRAVIT
ANNO · CHRISTI · CIↃ · IↃCCC · III.

H · S · E.
IOANNES · COVRTENAY
HOMO · LIBERALITER · ERVDITVS
ET · SINE · MALEDICTIS · FACETVS
QVI · PER · VITAM · BENE · LONGAM
NIHIL · CARIVS · AVT · ANTIQVIVS · HABVIT
QVAM · VT · FAMILARITER · AMICE · QVE · VIVERET
CVM · CAROLO · IACOBO · FOX
VIRO
OB · INGENIVM · VERE · ORATORIVM
ET · FIDEM · FACILITATEM · ATQVE · ANIMI · ALTITVDINEM
IN · PRIMIS · AMABILI
OBIIT · ETC.

CAROLO · IACOBO · FOX
BARONIS · HOLLAND · DE · FOXLEY · A · MAXIMO · NATV · FILIO · PROXIMO
SEPTIES · A · SVFFRAGATORIBVS · WESTMONASTERIENS.
IN · SENATVM · LECTO
REGIAE · MAIESTATI · GEORGII · TERTII · A · CONCILIIS · SECRETIS
ET · SCRIBAE · PVBLICIS · REBVS · PRAEPOSITO
VIRO
NON · SOLVM · ACVMINE · INGENII · ET · CELERITATE
MIRIFICE · PRAEDITO
SED · AB · OPTIMIS · ETIAM
QVAE · AD · SOLIDAM · VERAM · QVE · GLORIAM · VALENT
DOCTRINIS · CVMVLATISSIME · INSTRVCTO
SCRIPTORI
GRAVI · ET · SVBTILI ·
QVI · IN · MOMENTIS · OFFICIORVM · PERPENDENDIS
ET · IN · EXPLICANDIS · RATIONIBVS · BENE · GERENDAE · REIPVBLICAE
VTILI · SE · ID · QVOD · HONESTVM · ESSET
NVNQVAM · NON · PRAEFERRE
APERTE · ET · PALAM · PROFITEBATVR
ORATORI
VARIO · ET · VEHEMENTI · ET · VOLVBILI
QVI · EXEMPLORVM · E · COMMVNI · VITA
ET · HISTORIA · DEPROMPTORVM · COPIA
SENTENTIARVM · LVMINIBVS
EX · INTIMA · PHILOSOPHIA · HAVSTARVM
PONDERIBVS · VERBORVM · SEQVENTIVM · RES · PENITVS · PERSPECTAS
VVLTV · ITEM · GESTV · VOCE · QVAE · SIGNIFICARENT · INGENVE
QVO · SENSV · QVIDVIS · PRONVNCIASSET
MIRAM · SIBI · AVDIENTIAM · FACIEBAT
ET · SVMMAM · AVCTORITATEM · ATQVE · FIDEM · CONCILIABAT

SIMPLICIS · VERITATIS · CVLTORI
QVI · SERMONIS · ET · MORVM · SVAVITATE
MENTES · SVORVM · ALLICERE · MALEBAT
QVAM · ARROGANTIA · PERFRINGERE
FRAVDIS · OMNINO · ET · CRVDELITATIS
ACERRIMO · INIMICO
LIBERTATIS · QVA · DECVIT · FORTISSIMO · VINDICI
STRENVO · QVA · LICVIT · SVASORI · PACIS
CIVI · AMANTISSIMO · PATRIAE
ET · MAGIS · SPECTANTI · AD · MEMORIAM · POSTERITATIS
ET · CONSENTIENTEM · BONORVM · LAVDEM
QVAM · FRAGILEM · ET · CADVCAM · PRAESENTIS · TEMPORIS · GRATIAM
HOMINI · ITA · CONSILIORVM · QVAE · CONSIDERATE · SVSCEPISSET · TENACI
VT · SE · POTENTEM · SVI · ET · SIBI · CONSTANTEM
IN · MAXIMIS · RERVM · ASPERITATIBVS · PRAESTARET
ITA · DECORE · ET · MODERATE · HONORIBVS · INSERVIENDIS · PARATO
VT · NEQVE · INVIDERET · CVIQVAM · RIVALIVM · SVORVM
NEQVE · BENEVOLENTIAM · EORVM · QVI · DIGNITATI · IPSIVS · FAVERENT
BLANDITIIS · ET · ASSENTATIONIBVS · CAPTARET
ITA · AD · CLEMENTIAM · ET · MANSVETVDINEM
VEL · A · NATVRA · SIC · FACTO · VEL · VSV · INSTITVTO
VT · NIHIL · HVMANI · A · SE · ALIENVM · ESSE · STATVERET
QVI · VIXIT · ANN · LVII · MENS · VII · DIEB · XXI.
DECESSIT · ID · SEPTEMBR · ANNO · SACRO · M · DCCC · VI.
ET · CVM · FREQVENTIA · NON · VSITATA
AMICORVM · EX · ANIMO · DOLENTIVM
CONDITVS · EST · IN · HAC · ECCLESIA
VI · PROXIM · ID · OCTOBR.
REX · SENATVS · QVE · BRITANNICVS
H · M · P · P · P · IVSSERVNT

CAROLO · IACOBO · FOX
VIRO
SIMPLICI · INTEGRO · INNOCENTI
ORATORI
QVI · DE · MAXIMIS · REBVS · POTVIT
COMPOSITE · ORNATE · GRAVITER · ANIMOSE · QVE · DICERE
CIVI
POLITICAE · DISCIPLINAE · QVAM · A · MAIORIBVS · ACCEPERAT
PERITISSIMO
IN · TVENDA · LIBERTATE · ACERRIMO
ET · CONCILIANDAE · PACIS
INTER · REGES · AMBITIONE · DISCORDES
NVNQVAM · NON · STVDIOSO
HANC · COLVMNAM
P · P · C.
GVLIELMVS · CHAMBERLAYNE
ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{X}}$.

VIRO · OPTIMO
IACOBO · MARTIN
CVM · AETATE · IAM · INGRAVESCENTE
A · PVBLICIS · NEGOTIIS
QVIBVS · IN · SENATV · BRITANNICO
PER · TRIGINTA · ANNOS · DILIGENTISSIME · INTERFVERAT
SVA · SPONTE · SECESSISSET
THEOKBERIENSES · QVI · IN · SVFFRAGIIS · FERENDIS
HONORI · EIVS · FAVERE · CONSVEVERANT
IN · TESTIMONIVM · GRATI · ANIMI
QVO · SINGVLAREM · EIVS · IN · PATRIAM · AMOREM
ET · EXPLORATAM · ERGA · SE · FIDEM · PROSEQVEBANTVR
ARGENTEVM · HOC · POCVLVM
LL · D · DD.
ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{VII}}$.

EXTRA · PARIETEM · ORIENTALEM · SEPVLTVS · IACET
MATTHAEVS · RAINE
SCHOLAE · HARTFORDIENSIS · ANNOS · $\overline{L}$ · AMPLIVS · PRAECEPTOR
ECCLESIAE · SANCTI · IOANNIS · DE · STANWICK · $\overline{XXXVIII}$ · VICARIVS
PAROCHIAE · DE · KIRBY · WISKE · RECTOR · $\overline{XXII}$.
SVSCEPTA · VITAE · MVNERA
CVNCTA · DILIGENTER · ADMODVM · EXPLEVIT
MARITVS · PROBVS · LIBERALIS · PATER
STRENVVS · MAGISTER
ET · IN · TRADENDIS · LINGVARVM · ELEMENTIS · PERITISSIMVS
MAGISTRATVS · INTEGER
THEOLOGVS · HAVD · INDOCTVS
PASTOR · FIDELISSIMVS
NATVS · $\overline{IV}$ · KAL · OCTOBR · ANNO · CHRISTI · $\overline{M}$ · $\overline{DCC}$ · $\overline{XXVIII}$.
DECESSIT · $\overline{VII}$ · ID · NOVEMBR · $\overline{M}$ · $\overline{DCCC}$ · $\overline{VI}$.
IVXTA · CONQVIESCIT · ESTHERA
QVAM · EX · HONESTA · DE · VAREY · IN · COMITATV · CVMBRIAE
STIRPE · ORIVNDAM · VXOREM · DVXIT
$\overline{V}$ · KAL · MAII · A · C · $\overline{M}$ · $\overline{DCC}$ · $\overline{LVI}$.
MVLIEREM · PRVDENTIA · PLVS · QVAM · MVLIEBRI · INSTRVCTAM
PIETATE · ERGA · DEVM · PARENTES · MARITVM · LIBEROS · EGREGIA
IVSTA · IN · SVPERIORES · PARES · QVE · OBSERVANTIA
SINGVLARI · ERGA · AFFLICTOS · HVMANITATE
MORIBVS · VERE · CHRISTIANIS · INCORRVPTA · FIDE
NATA · $\overline{IV}$ · KAL · IVNII · A · C · $\overline{M}$ · $\overline{DCC}$ · $\overline{XXIII}$.
OBIIT · $\overline{VII}$ · KAL · IVLII · $\overline{M}$ · $\overline{DCCC}$ · $\overline{III}$.
HAVETE · PARENTES · DILECTISSIMI · SINT
ANIMAE · NOSTRAE · VOBISCVM
E · M · ET · I · R · PP.

RICARDO · LVBBOCK
NORVICI · NATO
GRAECIS · LATINIS · QVE · LITTERIS
IBIDEM · INSTITVTO
MAGNAM · POSTEA · IN · ACADEMIA · EDINBVRGENSI
LAVDEM · ADEPTO
PROPTER · INGENII · LVMEN
QVOD · IN · THESI · EIVS
DE · PRINCIPIO · SORBILI · CONSCRIPTO · ELVXERAT
VIRO
AB · OMNI · DOCTRINA · LIBERALI
ET · MAXIME · PHILOSOPHIA
CVMVLATE · INSTRVCTO
SERMONIS · COMITATE · ET · SVAVISSIMIS · MORIBVS
EXIMIE · PRAEDITO
DE · AMICIS · SVIS · ET · PROPINQVIS
OPTIME · MERITO
PATRIAE · AMANTISSIMO
QVI · CVM · IN · VRBE · QVA · NATVS · FVERAT
MEDICINAM · PER · XXIIII · ANNOS
SCIENTIA · ET · PERITE · EXERCVISSET
GRAVI · DIVTVRNO · QVE · MORBO · EFFECTVS
DECESSIT · QVARTO · NON · SEPTEMBR.
A · D · M · DCCC · VIII · AET · XXXXVIIII.
BRIGITA · LVBBOCK · CONIVX · EIVS · SVPERSTES
H · M · S · S · P · C.

RICARDO · PORSON · A · M.
BASTONAE · IN · AGRO · NORFOLCIENSI · ORIVNDO
ET · IN · SCHOLA · ETONENSI
OPTIMIS · DISCIPLINIS · INSTITVTO
COLLEGII · HVIVSCE · QVONDAM · SOCIO
ET · LINGVAE · GRAECAE · IN · ACADEMIA · CANTABRIGIENSI
PER · XV · ANNOS · PROFESSORI
QVI · DECESSIT · VII · KAL · OCTOBR.
ANNO · DOMINI · M · DCCC · VIII.
AETAT · XLIX.
ET · IN · HOC · SACELLO · CONDITVS · EST
MAGISTER · SOCII · QVE · PRAEDICTI · COLLEGII
VNA · CVM · EIVSDEM · ALVMNIS
OMNIVM · GENERVM · ATQVE · ORDINVM
H · M · PECVNIA · COLLATA
P · CC.
INERANT · IN · HOC · VIRO
MVLTAE · ET · RECONDITAE · LITTERAE
EGREGIA · IAM · INDE · A · PVERITIA · INDOLES · INGENII
SVMMA · IN · OMNIBVS · STVDIIS · AD · QVAE · INCVBVIT
DILIGENTIA · ET · SINGVLARE · ACVMEN
FIRMA · ET · PROPE · INCREDIBILIS
RERVM · AC · VERBORVM · MEMORIA
FACETIARVM · QVIDAM · LEPOS
NON · MODO · AD · SVPERBVM · IVDICIVM

INTELLIGENTIVM · ET · DOCTORVM
VERVM · ETIAM · AD · POPVLAREM · SENSVM
MIRIFICE · ACCOMMODATVS
IN · ERVENDO · ET · IDENTIDEM · INSTAVRANDO
QVICQVID · VEL · SITV · VETVSTATIS · OBRVTVM
VEL · DEFORMATVM · INCVRIA · LIBRARIORVM
DIV · IN · CODICIBVS · MANV · EXARATIS · DELITVISSET
ACERRIMA · ET · ANIMI · ET · OCVLORVM · ACIES
IN · PROPRIETATIBVS
TVM · PEDESTRIS · TVM · POETICI · SERMONIS
EXQVISITE · COGITATE · QVE · ENODANDIS
ET · VERSIBVS
QVI · IN · DRAMATICIS · VETERVM · OPERIBVS · REPERIVNTVR
AD · CERTAM · RATIONIS
ATQVE · VSVS · NORMAM · DIRIGENDIS
TERETES · ET · RELIGIOSAE · AVRES
TANTA · DENIQVE · IN · GRAECIS · ET · LATINIS · SCRIPTORIBVS
CORRIGENDIS · ATQVE · EXPLICANDIS
SVBTILITAS · ET · ELEGANTIA
VT · BENTLEIO · IN · RE · CRITICA · PRIMAS · TENENTE
PORSONVS · IVRE · AC · MERITO · VIDERETVR
IN · SECVNDIS · PRAECLARE · CONSISTERE

H · S · E.
IOANNES · MOORE
ALLECTVS · IN · EQVESTREM · ORDINEM · BALNEI
A · GEORGIO · TERTIO · BRITANNIARVM · REGE
ORTV · SCOTVS
IMPERATOR · FORTIS · IDEM · QVE · INNOCENS
ET · REI · MILITARIS · PERITISSIMVS
SCIENTIA · ET · VSV
QVI
IN · BATAVIA · CORSICA · AEGYPTO · INDIA · OCCIDENTALI
HOSTES · FVGATOS · VIDIT
HISPANORVM · TETRA · ET · DETESTABILI · TYRANNIDE · OPPRESSORVM
IVRA · LEGES · ARAS · ET · FOCOS
SVMMO · QVQ · POTVIT · STVDIO · TVTATVS · EST
ET · POST · VARIOS · BELLI · CASVS
CVM · AD · CORANIVM · AEGRE · ACCESSISSET
MILITES · SVOS
LONGO · ITINERE · FAME · FRIGORE · ENECTOS
AD · SVBEVNDAM · PRAELII · DIMICATIONEM
HORTANDO · EREXIT
AVDENDO · CONFIRMAVIT
GALLIS · NVMERO · COPIARVM · FRETIS
ET · FELICITATE · DVCIS · PAENE · PERPETVA · SVPERBIENTIBVS
VICTORIAM · E · MANIBVS · ERIPVIT
LEGIONI · QVADRAGESIMAE · SECVNDAE
PERICVLORVM · SOCIETATE · DIV · SECVM · CONIVNCTISSIMAE
ET · MEMORI · RERVM · IN · AEGYPTO · PROSPERE · GESTARVM
DE · VIRTVTE · DIGNA · COMMILITONIBVS · SVIS

GRATVLATVS · EST
ET · VVLNERE · PRO · PATRIA · SOCIIS · QVE · EIVS · ACCEPTO
VITAM · VTI · MVLTVM · ET · SAEPE · OPTAVERAT
BENE · CONSVMMAVIT
XVII · KAL · IANVAR · ANNO · SACRO · M · DCCC · VIIII.

GEORGIVS
GEORGII · TERTII · FILIVS
BRITANNIARVM · REGNVM · VNITVM · REGENS
ET · QVI · REGIAE · MAIESTATI
A · SANCTIORIBVS · CONSILIIS · SVNT
HOC · MONIMENTVM
PVBLICA · PECVNIA · PONENDVM · CVRAVERVNT
ANNO · SACRO
M · DCCC · XIIII.

A ☧ Ω

IOANNI · FREEMAN · A · M.

ECCLESIARVM · DE · CAISTER · ET · DE · RACKHEATH

PROPE · NORVICVM · RECTORI

VIRO · ACVMINE · INGENII

DOCTRINA · LIBERALI

ET · ADMIRABILI · QVODAM · FACETIARVM

ET · VRBANITATIS · LEPORE

EXIMIE · PRAEDITO

QVI · VITAM

HONESTISSIME · SANCTISSIME · QVE · ACTAM

CVM · MORTE · COMMVTAVIT

VIII · ID · OCTOBR · ANNO · DOMINI · M · DCC · LXXX · VII.

AETAT · LXXX · IV.

ANNA · FREEMAN

CONIVGI · BENE · MERENTI

H · M · PONENDVM · CVRAVIT

COLL · VIGORN.
THOMAS · BARTLAM · A · M.
COLLEGII · VIGORNIENSIS · HAVD · ITA · PRIDEM · SOCIVS
POSTEA · ECCLESIAE · CATHEDRALIS · ST · PETRI · EXON.
PRECENTOR · ET · CANONICVS · RESIDENTIARIVS
HOC · ARGENTVM · MENSALE
IN · VSVM · CAMERAE · COMMVNIS
L · M · D · D.
ANNO · SACRO · M · DCCC · XI.

ROBERTO · SMITH · A · M.
COLL · REGAL · APVD · CANTABRIGIENSES
QVONDAM · SOCIO
IVRISCONSVLTO · DE · PLVRIMIS
ET · CIVIBVS · BRITANNICIS · ET · ASIAE · INCOLIS
B · M.
VIRO · OB · INGENII · VIM · INSITAM
OB · MVLTAM · ET · EXQVISITAM · DOCTRINAM
OB · SENTENTIAS · IN · VERSIBVS · LATINE · SCRIPTIS
VBERES · ATQVE · ARGVTAS
SINE · CINCINNIS · FVCO · QVE · PVERILI
OB · GENVS · ORATIONIS · IN · AGENDIS · CAVSIS
NON · CAPTIOSVM · ET · VETERATORIVM
SED · FORTE · VIRILE · VEHEMENS
ET · QVA · RES · POSTVLAVERIT
MAGNIFICVM · ETIAM · AC · SPLENDIDVM
OB · GRAVITATEM · SERMONIS · FAMILIARIS
LEPORE · ET · FACETIIS · IVCVNDISSIME · CONDITAM
OB · FIDEM · HVMANITATEM · QVE
IN · VITA · INSTITVENDA
ET · IN · MAXIMIS · NEGOTIIS · PROCVRANDIS
ALTITVDINEM · ANIMI · SINGVLAREM
CVM · FAMA · MVLTIS · LIBERALITER · ERVDITIS · NOTO
TVM · SVIS · OMNIBVS · CARISSIMO
HVNC · LIBRVM
D · D.
SAMVEL · PARR
QVARTO · KAL · DECEMB · ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{XI}}$.

ANNAM · DAVY
QVAE · VIXIT · ANN · XXXII · MENS · XI · DIEB · XXII.
DECESSIT · IX · KAL · OCTOBR.
ANNO · SACRO · M · DCCC · XI.
FOEMINAM · LIBERALITER · INSTITVTAM
DOMISEDAM · CASTAM · PIAM
ET · CONIVGEM · DE · SE · OPTIME · MERITAM
MARTINVS · DAVY · S · T · P.
COLLEGII · CAIVS · ET · GONVILLE · CVSTOS
SVB · HOC · SAXO
CONDENDAM · CVRAVIT

IVXTA · HOC · MARMOR
SEPVLTVS · EST
IACOBVS · HOWELL · A · B.
ECCLESIAE · HVIVSCE · PER · XXX · ANNOS · RECTOR
VIR · PROBVS · ET · PIVS
PATER · MARITVS · QVE · SVORVM · AMANTISSIMVS
QVI · OBIIT · XVI · DIE · IANVARII
A · D · M · DCCC · XIII.
AETAT · LXV.
CONIVGE · VNICO · FILIO · ET · TRIBVS · FILIABVS
RELICTIS · IPSIVS · SVPERSTITIBVS

SAMVELI · PARR
D · D.
EDVARDVS · HAMLEY
ΦΙΛΙΑΣ · ΧΑΡΙΝ
VII · KAL · SEPTEMBR.
ANNO · SACRO · M · DCCC · V.

EDMVNDO · HENRICO · BARKER
D.
SAMVEL · PARR
ΦΙΛΙΑΣ · ΧΑΡΙΝ
XIV · KALEND · AVGVST.
ANNO · SACRO · M · DCCC · XIII.

EDMVNDO · HENRICO · BARKER
D · D.
SAMVEL · PARR
ΦΙΛΙΑΣ · ΚΑΙ · ΕΥΝΟΙΑΣ · ΧΑΡΙΝ
XIV · KAL · AVGVST.
A · D · M · DCCC · XIII.

ANNEAE · CAROLETTAE · BRVCE
FEMINAE · OPTIMAE
VXORI · CARISSIMAE
QVAE · DECESSIT · XIII · KAL · MART.
ANNO · DOMINI · M · DCCC · XIII.
AETAT · XXXVII.
ET · HIC · LOCI · SEPVLTA · EST
NINIANVS · BRVCE · CONIVX · EIVS
ET · IN · REGALI · COLLEGIO · MILITARI · CHIRVRGVS
HOC · MONIMENTVM
MOERENS · POSVIT

CVM · ALEXANDER · RVSSIAE · IMPERATOR
MENS · IVN · ANNO · SACRO · M̅ · D̅C̅C̅C̅ · X̅I̅V̅.
OXONIVM · INVISERET
SE · SVAM · QVE · SOROREM · VNICE · AMATAM
IN · COLLEGIO · MERTONENSI
VOLVIT · EXCIPI · HOSPITIO
QVOD · NE · POSTERI · NESCIRENT
STVDIOSE · ATQVE · HONORIFICE · IIS · COMMODATVM
CVSTOS · SOCII · QVE · EIVSDEM · COLLEGII
HANC · TABELLAM · MARMOREAM
POSVERVNT

CVM · IN · HOC · CVBICVLO · REGINALI · DICTO
PROPTEREA · QVOD · HENRIETTA
CONIVX · CAROLI · PRIMI · REGIS · ANGLIAE
OLIM · IN · EO · DORMIVERAT
ALEXANDER · RVSSIAE · IMPERATOR
QVIESCERE · NON · GRAVATVS · ESSET
XVIII · ET · XVII · KAL · IVLII
ANNO · SACRO · M · DCCC · XIV.
PETRVS · VAVGHAN · COLLEGII · MERTONENSIS · CVSTOS
FENESTRAM · HANCCE · PICTVRATAM
S · S · P · C.

EX · DONO
REVERENDI · VIRI
ATQVE · IMPRIMIS
DOCTI · SAPIENTIS · PII
MARTINI · ROVTH · D · D.
VII · KAL · AVG.
ANNO · SACRO · M · DCCC · XV.
MAGD · COLL · OXON.

GVLIELMVS · IESSE · A · M.
COLLEGII · SACROSANCTAE · TRINITATIS · APVD · OXONIENSES
OLIM · ALVMNVS
COMITI · DE · GLASCVO · A · SACRIS
RIBBESFORDIAE · IN · COMITATV · VIGORN.
ET · DOWLESIAE · IN · COMITATV · SALOP · RECTOR
HVIVS · ECCLESIAE · IN · QVA · CONDITVS · EST
VICARIVS · PERPETVVS
ET · CONCIONATOR · POMERIDIANVS
VIXIT · ANNOS · LXXVI · MENS · VIII · DIES · XVII.
VIR · ERAT
IVSTVS · INTEGER · RELIGIOSVS
QVI
CVM · SIBI · CONSCIVS · ESSET · SE · EVANGELIO
SINCERE · CONSTANTER · QVE . CREDERE
ET · DEVM · HABERE · IN · QVO
OMNEM · SPEM · SALVTIS · AETERNAE · DEFIGERET
MENTE · QVA · CHRISTIANVM · DECEBAT · TRANQVILLA
VITAM · CVM · MORTE · COMMVTAVIT
TRICESIMO · DIE · DECEMBRIS · ANNO · SACRO · M · DCCC · XIV.
PASTORIS · OPTIME · DE · SE · MERITI
GRATE · MEMORES
ET · SPERANTES · FORE
VT · SVVS · ESSET · IDEM · QVI · ILLIVS · EXITVS
AVDITORES · EIVS · ATQVE · AMICI
HOC · MONIMENTVM · PONENDVM · CVRAVERVNT

THOMAE · IACOBO · MATHIAE
VIRO
DOCTRINA · ET · OPTIMARVM · ARTIVM · STVDIIS · ERVDITO
POETAE · FESTIVO · ET · CONCINNO
PERELEGANTI · CRITICO · ET · PERSVBTILI
HVNC · LIBRVM
D · D.
SAMVEL · PARR
NON · MAII · ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{XV}}$.

GVLIELMO · ROSCOE
VIRO
MVLTIPLICI · ET · EXQVISITA · DOCTRINA
INTEGRITATE · SINGVLARI
ET · SVMMA · NON · SOLVM · VITAE · ET · NATVRAE
SED · SERMONIS · ETIAM · COMITATE
PRAEDITO
HVNC · LIBRVM
QVEM · A · PRAENOBILI · ET · PERERVDITO
AMICO · SVO
GEORGIO · HENRICO · BARONE · DE · HOLLAND
PAVLO · ANTEA · ACCEPERAT
D · D.
SAMVEL · PARR
ΦΙΛΙΑΣ · ΚΑΙ · ΕΥΝΟΙΑΣ · ΧΑΡΙΝ
KAL · DECEMB · ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{XV}}$.

IOANNI · LYON
PRESTONIAE · IN · PAROECIA · HARROVIENSI
MORTVO
SEXT · NON · OCTOBR · ANNO · CHRISTI · $\overline{M}$ · $\overline{D}$ · $\overline{XCII}$.
ET · IN · HAC · ECCLESIA · SEPVLTO
FVNDI · DOMINO · CVLTORI · QVE
ASSIDVO · FRVGI · PROBO
SAPIENTI · SINE · VIA · ET · ARTE
ET · QVIA · BONIS · SVIS · OPTIME · VTI · NOVIT
VNICE · FORTVNATO
SCHOLAE · IMPENSIS · EIVS · EXTRVCTAE
ET · AD · PVEROS · GRAECIS · AC · LATINIS · LITTERIS
ERVDIENDOS · INSTITVTAE
GVBERNATORES · MAGISTRI · ATQVE · ALVMNI
HOC · MONIMENTVM · COLLATA · PECVNIA
PONENDVM · CVRAVERVNT
ANNO · SACRO · $\overline{M}$ · $\overline{DCCC}$ · XV.

COLLEGII · MERTONENSIS
CVSTODI · SOCIIS · QVE
VV · DOCTISSIMIS · ET · SANCTISSIMIS
A · QVIBVS
CVM · OXONIVM · INVISERET
LIBERALI · HOSPITIO · RECEPTVS · ERAT
QVO · SVAM · IN · EOS · VOLVNTATEM · SIGNIFICARET
HOC · VAS
L · M · D · D.
ALEXANDER · OMNIVM · RVSSIARVM · IMPERATOR
ANNO · SACRO · M · DCCC · XVI.

COLLEGII · MERTONENSIS
CVSTODI · SOCIIS · QVE
VV · DOCTISSIMIS · ET · SANCTISSIMIS
A · QVIBVS
CVM · OXONIVM · INVISERET
LIBERALI · HOSPITIO · RECEPTVS · EST
HOC · VAS
E · IASPIDE · SIBERIANO · FACTVM
MEMORIS · GRATI · QVE · ANIMI · SPECIMEN
D · D.
ALEXANDER · OMNIVM · RVSSIARVM · IMPERATOR
ANNO · SACRO · M · DCCC · XVI.

AQVA · EX · HOC · PVTEO · HAVSTA
SITIM · SEDAVIT
RICHARDVS · TERTIVS · REX · ANGLIAE
CVM · HENRICO · COMITE · DE · RICHMONDIA
ACERRIME · ATQVE · INFENSISSIME · PRAELIANS
ET · VITA · PARITER · AC · SCEPTRO
ANTE · NOCTEM · CARITVRVS
XI · KAL · SEPT · A · D · M · CCCC · LXXXV.

IOANNI · IOHNSTONE · M · D.
VIRO · ERVDITO · AMICO · OPTIMO
HOC · POCVLVM
PATRONI · ADMODVM · HONORATI · THOMAE · COKE
CARISSIMVM · MNHMOΣYNON
L · M · D · D.
SAMVEL · PARR · LL · D.
SEPT · KAL · FEB · A · D · $\overline{M}$ · $\overline{DCCC}$ · $\overline{XVI}$.
QVI · ERAT · IPSIVS · DIES · NATALIS

HENRICO · DISON · GABELL · S · T · P.
SCHOLAE · VINTONIENSIS · ARCHIDIDASCALO
VIRO
CVM · LIMATO · IVDICIO
ET · MVLTIPLICI · DOCTRINA
ORNATISSIMO
TVM · IN · IVVENTVTE · AD · HVMANITATEM · INFORMANDA
DIV · SCIENTER · ET · PERITE · VERSATO
HVNC · LIBRVM
AMICITIAE · SVAE · MNHMOΣYNON
D · D.
SAMVEL · PARR
NON · IVN.
ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{XVI}}$.

THOMAE · ARNOLD · M · D.
VIRO · INTEGERRIMO · SANCTISSIMO
GRAECIS · ATQVE · LATINIS · LITTERIS · ERVDITO
ET · OPTIMIS · PHILOSOPHIAE · DISCIPLINIS · INSTITVTO
QVI
CVM · IN · HOC · OPPIDO · PER · LII · ANNOS · MEDICINAM
SCIENTER · AC · PERITE · FACTITASSET
ET · PRAECIPVE · AD · CVRATIONEM · HOMINVM
EX · INSANIA · LABORANTIVM · INCVBVISSET
DECESSIT · IV · NON · SEPTEMBR · ANNO · DOMINI · M · DCCC · XVI.
AETAT · LXXV.
ET · MAGNVM · SVI · DESIDERIVM
APVD · OMNES · BONOS · RELIQVIT
MARIA · CONIVX · EIVS · SVPERSTES
HOC · MONIMENTVM · CONTRA · VOTVM · POSVIT

SAMVELI · PARR
HOC · POCVLVM · D · D.
GEORGIVS · THACKERAY · S · T · P.
COLL · REGAL · PRAEPOSITVS
ΦΙΛΙΑΣ · ΚΑΙ · ΕΥΝΟΙΑΣ · ΧΑΡΙΝ
ANNO · SACRO · M · DCCC · XVII.

CAROLO · FOX · TOWNSHEND
HONORATISSIMI · VIRI · IOANNIS · TOWNSHEND · FILIO
HVIVS · COLLEGII · ALVMNO ·
ADOLESCENTI · OPTIMARVM · ARTIVM · STVDIIS · ERVDITO
SODALI · OB · SVAVITATEM · SERMONIS · ET · MORVM · AMABILI
QVI · VIXIT · ANNOS · XXI · MENSES · IX · DIES · V.
DECESSIT · IV · NON · APRIL · ANNO · SACRO · M · DCCC · XVII.
CANTABRIGIENSIS · SVI
H · M · LL · M · PONENDVM · CVRAVERVNT

A · ☧ · Ω

CAROLO · BVRNEIO · LL·D· S·T·P· A·S· ET · R·S· SODALI
GRAECARVM · LITTERARVM · ET · LATINARVM · PROFESSORI
IN · REGIA · ACADEMIA · LONDINENSI
GEORGIO · TERTIO · BRITANNIARVM · REGI · A · SACRIS
ECCLESIAE · LINCOLNIENSIS · PRAEBENDARIO
CLIFFIAE · ET · ECCLESIAE · D · PAVLI · DEPTFORDIENSIS
IN · AGRO · CANTIANO · RECTORI
SCHOLAE · GRENOVICENSIS · PER · XVIII · ANNOS · MAGISTRO
QVI · VIXIT · ANNOS · LX · DIES · XXIV.
DECESSIT · QVINTO · KAL · IANVAR · ANNO · SACRO · ↃↃ · ↃCCC · XVIII
ET · DEPTFORDIAE · SEPVLTVS · EST
DISCIPVLI · EIVS · HOC · MONIMENTVM · PECVNIA · COLLATA · POSVERVNT
INERANT · IN · HOC · VIRO
PLVRIMAE · ET · RECONDITAE · LITTERAE
IVDICIVM · ARTIS · CRITICAE · PRAECEPTIS
STILI · QVE · FREQVENTISSIMA · EXERCITATIONE · LIMATVM
ET · IN · NODIS · REI · METRICAE · SOLVENDIS
EXIMIA · QVAEDAM · SOLLERTIA
IN · LIBRIS · QVOS · LATINE · AVT · ANGLICE · CONSCRIPSIT
LVCIDVS · ERAT · SENTENTIARVM · ORDO
ET · SINE · FVCO · NITOR · VERBORVM
SERMONEM · EIVS · AD · MAGNAM
ET · INGENII · ET · DOCTRINAE · OPINIONEM · COMMENDABANT
MOTVS · ANIMI · AD · EXCOGITANDVM · CELERES
VOX · PLENA · ET · CANORA
ACIES · OCVLORVM · ACERRIMA · ILLA · QVIDEM
SED · HILARITATE · TOTIVS · VVLTVS · SVAVITER · TEMPERATA
ET · ARGVTIAE · IVCVNDISSIMO · LEPORE · CONDITAE
QVVM · IVVENES · AD · POLITIOREM · HVMANITATEM · INFORMARET
ACCVRATIVS · QVODDAM · ET · EXQVISITVS · DOCENDI · GENVS · ADHIBEBAT

ET · IN · MENTIBVS · EORVM · AD · OMNE · OFFICII · MVNVS · INSTRVENDIS
PERSONAM · MAGISTRI · SVMMA · FIDE · ET · GRAVITATE · TVEBATVR
HASCE · AD · LAVDES · ACCESSERVNT
SINGVLARIS · VITAE · ATQVE · NATVRAE · COMITAS
QVAE · OPTIMI · CVIVSQVE · BENEVOLENTIAM · CONCILIABAT
ET · DISCIPVLOS · AD · AMOREM · ET · REVERENTIAM · PRAECEPTORIS · SVI
MIRIFICE · ALLICIEBAT
ASSIDVVM · ET · VEHEMENS · STVDIVM · IN · PROMENDIS · CONSILIIS
QVAE · LVDIMAGISTRIS · INDIGENTIBVS · AVT · SENIO · CONFECTIS
SOLATIVM · AC · PERFVGIVM · PRAEBERE · POSSENT
ET · DIGNA · HOMINE · PERFECTE · ERVDITO · DILIGENTIA
IN · COMPARANDA · BIBLIOTHECA
QVAE · LIBRIS · ALIIS · MANV · SCRIPTIS
ALIIS · E · PRELO · EMISSIS
ITA · ORNATA · FVIT
VT · POST · MORTEM · POSSESSORIS · LVCTVOSAM
EMERETVR · SVMTV · PVBLICO
ET · IVSSV · ANGLICI · PARLIAMENTI
IN · BRITANNICO · MVSEO · COLLOCARETVR
MAXIME · AVTEM · IN · BVRNEIO · ELVCEBANT
VOLVNTAS · IN · ANGLICAM · ECCLESIAM · PROPENSISSIMA
SPES · AETERNAE · SALVTIS · PIE · IN · CHRISTO · POSITA
ET · CONSVETVDO · PVRE · ATQVE · CASTE
VENERANDI · DEVM

NATHANIELI · CLAYTON
PROCVRATORI · RERVM · FORENSIVM · PERITO
VIRO · INTEGERRIMO
AMICO · OPTIMO
IN · TESTIFICATIONEM · OFFICIORVM . EIVS · ERGA · SE
FIDELITER · ET · GRATVITO · COLLATORVM
D · D · HVGO · MOISES
ANNO · SACRO · M · DCCC · XVIII.

HVGONI
FILIO · HVGONIS · MOISES · TOY · MAKAPITOY
GRATO · ANIMO · IN · PATREM · EIVS
OPTIME · DE · SE · MERITVM
D · D.
GVL · ETTRICK
ANNO · SACRO · M · DCCC · XVII.

GVLIELMO · HOPPER · WILLIAMSON
VIRO · INTEGERRIMO
IVRISCONSVLTO · IN · PRIMIS · PERITO
PROPRAETORI · FIDE · ET · DILIGENTIA · SPECTATISSIMO
OB · EGREGIA · EIVS · IN · CIVES · SVOS · MERITA
MVNICIPES · NOVI · CASTRI · SVPER · TINAM
HOC · ARGENTVM · L · M · CONSCIVERVNT
ANNO · SACRO · $\overline{\text{M}}$ · $\overline{\text{DCCC}}$ · $\overline{\text{XX}}$.

H · S · E.
GVLIELMVS · BENNET · S · T · P.
QVI
LONDINI · NATVS
ET · IN · SCHOLA · HARROVIENSI
LITTERIS · HVMANIORIBVS · IMBVTVS
IN · HOC · COLLEGIO
SCHOLARIS · SOCII · TVTORIS · OFFIGIIS
PER · ANNOS · XXVII.
GVMVLATE · SATISFECIT
POSTEA · CVM · A · IOHANNE · COMITE · DE · WESTMORELAND
IN · HIBERNIA · REGIS · LOCVM · TENENTE
HABITVS · ESSET · VNICE · DIGNVS
IN · SEDEM · EPISCOPALEM
CORCAGIENSEM · PRIMO · DEINDE · CLONENSEM
EVECTVS · EST
INTEGRITATE · ET · INNOCENTIA · SINGVLARI · PRAEDITVS
RECTE · IDEM · ET · SVAVITER · VITAM · EGIT
DIFFICILE · VT · ESSET · IVDICARE
VTRVM · AMICI · MAGIS · DOCTRINAM
MVLTIPLICEM · ILLAM · ET · SVBTILEM · VENERARENTVR
AN · MORVM · FELICITATEM · ET · COMITATEM · DILIGERENT
VIXIT · ANN · LXXIV · MENS · III · DIES · XXIII.
DECESSIT · ANNO · SACRO
M · DCCC · XX.

HOC · MONIMENTVM · POSITVM · EST
EX · VLTIMA · VOLUNTATE
GVILIELMI · BENNET · S · T · P.
QVI
LONDINI · NATUS
ET · IN · SCHOLA · HARROVIENSI · LITTERIS · HVMANIORIBVS · IMBVTVS
IN · HOC · COLLEGIO
SCHOLARIS · SOCII · ET · TVTORIS · OFFICIIS
PER · ANNOS · XXVII.
CVMVLATE · SATISFECIT
POSTEA · CVM · A · IOANNE · COMITE · DE · WESTMORELAND
IN · HIBERNIA · REGIS · LOCVM · TENENTE
HABITVS · ESSET · VNICE · DIGNVS
QVI · A · SACRIS · EI · ET · AB · EPISTOLIS · SECRETIS · ESSET
IN · SEDEM · EPISCOPALEM
CORCAGIENSEM · DEINDE · CLONENSEM · EVECTVS · EST
INTEGRITATE · ET · INNOCENTIA · SINGVLARI · PRAEDITVS
RECTE · IDEM · ET · SVAVITER · VITAM · EGIT
VT · DIFFICILE · ESSET · IVDICARE
VTRVM · AMICI · MAGIS · DOCTRINAM · EIVS
MVLTIPLICEM · ET · EXQVISITAM · VENERARENTVR
AN · MORVM · COMITATEM · ANIMVM · QVE
IN · SVOS · BENEVOLVM · DILIGERENT
VIXIT · ANN · LXXIV · MENS · III · DIES · XXIII.
DECESSIT · XVII · KAL · AVG.
ANNO · SACRO · M · DCCC · XX.
ET · PLVMSTEDIAE · IN · AGRO · CANTIENSI
CONDITVS · EST

EX · DONO
GEORGII · COMITIS · A · ROCKSAVAGE
QVI · PER · HANC · PELVIN · ARGENTEAM
MEMORIAE · SVORVM · TRADI · VOLVIT
HORATIONEM · SEYMOVR · IPSIVS · NEPOTEM
ET · HVGONIS · ET · CAROLETTAE · SEYMOVR · FILIVM
LICHEFELDIAE · NATVM · FVISSE
DECIMO · QVINTO · DIE · SEPTEMBRIS
ET · VICESIMO . TERTIO · DIE · EIVSDEM · MENSIS
IBIDEM · BAPTIZATVM
ANNO · SACRO · M · DCCC · XXI.

SERENISSIMI · DOCTISSIMI · QVE · PRINCIPIS
AVGVSTI · FREDERICI
DVCIS · SVSSEXIAE
BIBLIOTHECAE · CATALOGVS
OPERA · ET · STVDIO
THOMAE · IOSEPHI · PETTIGREW
CONFECTVS

GRAECAE · POESEOS
THESAVRVM
A · THOMA · MORELL · S · T · P · INCHOATVM
QVAM · PLVRIMIS · IN · LOCIS · EMENDAVIT
LATINA · VOCVM · OMNIVM · INTERPRETATIONE · DONAVIT
NOTIS · QVE · REM · TVM · CRITICAM · TVM · METRICAM
ILLVSTRAVIT
EDVARDVS · MALTBY · S · T · P.

THOMAE · DENMAN
VIRO · DOCTRINA · LIBERALITER · INSTITVTO
IVRISCONSVLTO · AD · AGENDVM · PERITO
SENATORI · QVI · POSSET
DILVCIDE · ORNATE · GRAVITER · QVE · ELOQVI
FORTI · ET · CONSTANTI · LIBERTATIS · VINDICI
AEQVI · ET · BONI · PERINDE · AC · IVRIS
CVLTORI · INCORRVPTISSIMO
CALAMITOSORVM · ATQVE · INNOCENTIVM
ACERRIMO · PROPVGNATORI
HVNC · LIBRVM
D · D.
SAMVEL · PARR
ΦΙΛΙΑΣ · ΚΑΙ · ΕΥΝΟΙΑΣ · ΧΑΡΙΝ
HATTONIAE
XIII · KALEND · SEXTIL.
ANNO · SACRO · M · DCCC · XXI.

SAMVELI · PARR
VT · SVAE · CVM · ILLO · AMICITIAE
INDICIVM · ALIQVOD · EXTARET
HANC · ARISTOPHANIS · EDITIONEM · PRINCIPEM
TESTAMENTO · LEGAVIT
SAMVEL · ROMILLY
FVIT · HIC · VIR
ALTITVDINE · QVADAM · ANIMI · PRAEDITVS
ET · AD · AMABILEM · ILLAM · GRAVITATIS
CVM · FACILITATE · CONIVNCTIONEM
VITA · ET · MORIBVS · COMPROBANDAM
VNICE · IDONEVS
A · PHILOSOPHIA · HISTORIA · ET · VSV
AD · CAVSAS · TVM · FORENSES · TVM · SENATORIAS
CVMVLATE · INSTRVCTVS
IN · DICENDI · GENERE · NON · VETERATORIO · AVT · DECLAMATORIO
SED · FORTI · ET · VIRILI · EXCELLENS · PRAECLARE
OMNI · AB · INVIDIA · ET · ARROGANTIA
VACVVS · ATQVE · INTEGER
A · SEVERITATE · IN · REOS · ABHORRENS
MITIS · ET · MISERICORS · IN · CALAMITOSOS
PRVDENS · AD · CONSILIA
PROPOSITI · TENAX
IDEM · QVE · OB · SINGVLAREM
IN · PARENTES · CONIVGEM · ATQVE · LIBEROS · PIETATEM
ET · INSIGNEM · AD · MAXIMAM · LAVDEM
PATRIAE · AMOREM
BONIS · OMNIBVS · MERITO · CARISSIMVS

ASSERVANDVM · IN · BIBLIOTHECA · COLL · EMMAN.
CVIVS · SE · OLIM · FVISSE · ALVMNVM
MEMORI · PIO · QVE · ANIMO · PROFITETVR
HANC · ARISTOPHANIS · PRINCIPEM · EDITIONEM
TESTAMENTO · LEGATAM · SIBI · A · SAMVELE · ROMILLY
L · M · D · D.
SAMVEL · PARR
TERT · ID · APRIL.
ANNO · SACRO
CIↃ · IↃCCC · XXII.

HENRICO · BROVGHAM
CAVSAE · SVAE · CONTRA · VETERATORES
ACERBE · ET · ASPERE · ACCVSANTES
PATRONO
GRAVI · ET · VEHEMENTI · ET · DISERTO · ET · FIDELI
HVNC · LIBRVM
GRATI · ANIMI · MNHMOΣYNON · DEDIT
CAROLINA
GEORGII · QVARTI · REGIS · BRITANNIARVM
CONIVX
A · IVDICIBVS · ERGA · SE · REAM · INIQVIS
CONTVMELIOSE · IN · IVS · VOCATA
AB · OFFICIIS · MVLTORVM
QVOS · FLATV · PROSPERO · FORTVNAE · VSA
BENE · MERENDO · SIBI · DEVINCTOS · ESSE
CREDIDERAT
INOPINATO · DESERTA
A · CONSILIARIIS · PVRPVRATIS
DOMINO · SERVIENTIBVS
FOEDISSIME · PRODITA
SED · A · SCELERE · OMNINO · PVRA
II · DECEMBR · M · DCCC · XXIII.

EDMVNDO · BVRKE
VIRO
TVM · OB · DOCTRINAM · MVLTIPLICEM · ET · EXQVISITAM
TVM · OB · CELERES · ILLOS · INGENII · MOTVS
QVI · ET · AD · EXCOGITANDVM · ACVTI
ET · AD · EXPLICANDVM
ORNANDVMQVE · VBERES · SVNT
EXIMIO · AC · PRAECLARO
OPTIME · DE · LITTERIS
QVAS · SOLAS · ESSE · OMNIVM · TEMPORVM
OMNIVM · QVE · LOCORVM · EXPERTVS · VIDIT
OPTIME · DE · SENATV
CVIVS · PERICLITANTIS
IPSE · DECVS · ET · COLVMEN · FVIT
OPTIME · DE · PATRIA
IN · CIVES · SVI · AMANTISSIMOS · EHEV · INGRATA
NVNQVAM · NON · PROMERITO
LIBRVM · HVNCCE
EA · QVA · PAR · EST · OBSERVANTIA
D · D · D.
A · E · A · O.

CAROLO · IACOBO · FOX
QVOD · VERAM · ILLAM · ET · ABSOLVTAM · ELOQVENTIAM
NON · MODO · COLVERIT · SED · CVLTAM · QVA · POTVIT
AD · SALVTEM · PATRIAE
DIGNITATEM · QVE · TVENDAM · CONTVLERIT
QVOD · IN · SVSCIPIENDIS · SIVE · AMICITIIS
SIVE · INIMICITIIS · HAS · SEMPER · VOLVERIT
MORTALES · HABERE · ILLAS · SEMPITERNAS
QVOD · MENTE · SOLIDA · INVICTA · QVE
PERMANSERIT · IN · PROPOSITO
ATQVE · IMPROBORVM · SPREVERIT · MINAS
QVOD · IN · CAVSA
QVAE · MAXIME · POPVLARIS · ESSE · DEBVISSET
NON · POPVLARITER · ILLE · QVIDEM
VT · ALII · FICTE · ET · FALLACITER · POPVLARES
SED · STRENVE · AC · FORTITER · VERSATVS · SIT
QVOD · DENIQVE · IN · FOEDISSIMO · ILLO
OPTIMI · PRVDENTISSIMI · QVE · SENATVS · NAVFRAGIO
ID · DEMVM · IMO · ID · SOLVM
QVOD · TVRPE · ESSET
MISERVM · EXISTIMARIT · ATQVE · ADEO · CVM · BONIS
LIBERE · ΠΟΛΙΤΕΥΤΕΟΝ · STATVERIT
POTIVS · QVAM · PERICVLOSE · ET · SIMVLATE
ET · CVPIDE · INTER · MALOS
LIBRVM · HVNCCE
EA · QVA · PAR · EST · OBSERVANTIA
D · D · D.
A · E · A · O.

HONORATISSIMO · VIRO
FREDERICO · DOMINO · NORTH
QVI
IN · AEQVABILI · ET · TEMPERATO · DICENDI · GENERE
FACILE · PRIMAS · TENET
QVEM · SCIVNT · OMNES
TVM · IN · SERMONE · TVM · MORIBVS
GRAVITATEM · SERVARE
NON · TRISTEM · ILLAM · AC · TETRICAM
SED · COMITATE · QVADAM · ET · LEPORE
SVAVISSIME · CONDITAM
QVI · OPTIMORVM · ET · CIVIVM · ET · VIRORVM
AMICITIA · DIGNISSIMVS
NOVIT · SIMPLICITER · ET · CANDIDE · PONERE · INIMICITIAS
CVIVS · NVNQVAM · IN · CLIENTIVM
TVRBAM · INFIDELEM · INGRATAM · QVE
IVSTA · EXARSIT · IRA
NVNQVAM · IN · LEGIBVS
INSTITVTIS · QVE · MAIORVM · DEFENDENDIS
INDVSTRIA · ELANGVIT
NVNQVAM · PERTVRBATIS · TEMPORIBVS
SVA · CVM · RES · AGERETVR
FIDES · VIRTVS · QVE · CONTREMVIT
LIBRVM · HVNCCE
IN · SVMMAE · OBSERVANTIAE · ADMIRATIONIS
ET · PIETATIS · TESTIMONIVM
D · D · D.
A · E · A · O.

THIS MONUMENT WAS ERECTED,
BY THREE SURVIVING BROTHERS AND A SISTER,
TO THE MEMORY OF
THE AMIABLE AND ACCOMPLISHED
SUSANNAH LOWNDES,
ELDEST DAUGHTER OF THE LATE
RICHARD AND SUSANNAH LOWNDES
OF LIVERPOOL.
SHE WAS BORN IN THAT TOWN 12th AUGUST, 1794,
DIED AT WARWICK, ON THE 19th FEBRUARY, 1813,
AND ON THE 26th WAS BURIED AT THE ENTRANCE
OF THIS CHANCEL.

HONORATISSIMO · VIRO
FREDERICO · DOMINO · NORTH
QVI
IN · AEQVABILI · ET · TEMPERATO · DICENDI · GENERE
FACILE · PRIMAS · TENET
QVEM · SCIVNT · OMNES
TVM · IN · SERMONE · TVM · MORIBVS
GRAVITATEM · SERVARE
NON · TRISTEM · ILLAM · ET · TETRICAM
SED · COMITATE · QVADAM · ET · LEPORE
SVAVISSIME · CONDITAM
QVI · OPTIMORVM · ET · CIVIVM · ET · VIRORVM
AMICITIA · DIGNISSIMVS
NOVIT · SIMPLICITER · ET · CANDIDE · PONERE · INIMICITIAS
CVIVS · NVNQVAM · IN · CLIENTIVM
TVRBAM · INFIDELEM · INGRATAM · QVE
JVSTA · EXARSIT · IRA
NVNQVAM · IN · LEGIBVS
INSTITVTIS · QVE · MAIORVM · DEFENDENDIS
INDVSTRIA · ELANGVIT
NVNQVAM · PERTVRBATIS · TEMPORIBVS
SVA · CVM · RES · AGERETVR
FIDES · VIRTVS · QVE · CONTREMVIT
LIBRVM · HVNCCE
IN · SVMMAE · OBSERVANTIAE · ADMIRATIONIS
ET · PIETATIS · TESTIMONIVM
D · D · D.
A · E · A · O.

NEAR THIS PLACE
ARE INTERRED THE REMAINS
OF
JAMES DRAKE AND ELIZABETH HIS WIFE,
INHABITANTS OF THIS TOWN.
JAMES DIED JUNE 24th, 1761,
AGED 75;
ELIZABETH DIED JUNE 10th, 1775,
AGED 79.
THEIR HARMONY IN THE CONJUGAL CHARACTER
AND THEIR TENDERNESS IN THE PARENTAL
WERE TRULY AMIABLE;
THEIR INDUSTRY IN BUSINESS
AND THEIR INTEGRITY IN EVERY RELATION OF LIFE
TRULY RESPECTABLE;
THEIR CHARITY EXTENSIVE WITHOUT OSTENTATION,
AND THEIR DEVOTION FERVENT WITHOUT SUPERSTITION.
TO THE JUSTNESS OF THIS REPRESENTATION,
THE ESTEEM OF THEIR FRIENDS,
AND THE DUTIFUL AFFECTION OF THEIR CHILDREN
BEAR AN HONOURABLE TESTIMONY.
SOLID MERIT DISDAINS THE AID OF FLATTERY,
BUT IF GRATITUDE BE PERMITTED
TO COMMEND THE VIRTUES OF THE LIVING,
LET NOT FILIAL PIETY BE CONDEMNED

FOR PAYING THIS TRIBUTE OF SINCERE VENERATION
TO THE MEMORY OF THE DEAD.

IN THE SAME VAULT
ARE BURIED JAMES AND JOHN DRAKE,
ELDEST SONS OF
THE AFORESAID JAMES AND ELIZABETH.
JAMES DIED MARCH, 1737,
AGED 18;
JOHN DIED SEPT. 28th, 1773,
AGED 49.
THREE OF THE CHILDREN ARE NOW LIVING,
RICHARD, LAURENCE, AND THOMAS.
THIS MONUMENT
WAS ERECTED AT THE JOINT EXPENCE
OF RICHARD AND THOMAS,
A. D. 1776.

TO THE MEMORY OF
CHARLES CHAPMAN,
WHO WAS BORN IN NORWICH, AUGUST 8th, 1725,
AND DIED THERE FEBRUARY 3rd, 1802,
THIS MONUMENT IS ERECTED
BY HIS WIDOW, TWO SONS, AND THREE DAUGHTERS,
IN TESTIMONY
OF THEIR GRATITUDE FOR HIS KINDNESS,
AND THEIR RESPECT FOR HIS VIRTUES.
AMIDST THE CONFIDENCE OF HIS EMPLOYERS,
AND THE ESTEEM OF HIS FRIENDS,
HE CARRIED ON
THE TRADE OF AN UPHOLSTERER FOR 34 YEARS
IN HIS NATIVE CITY.
BY UNWEARIED DILIGENCE,
BY SOUND ECONOMY,
AND BY THE MOST INFLEXIBLE INTEGRITY,
HE ACCUMULATED A FORTUNE
WHICH ENABLED HIM TO RETIRE
FROM THE TOILS AND CARES OF BUSINESS IN 1790.
HE WAS SUPPORTED UNDER THE INFIRMITIES OF AGE
BY THE ADVANTAGES OF A WELL-EARNED COMPETENCY,
AND HE WAS PREPARED FOR THE APPROACH OF DEATH
BY THE REMEMBRANCE OF A WELL-SPENT LIFE.

THIS TABLET
IS CONSECRATED TO THE MEMORY
OF THE REV. JOSEPH PRIESTLEY, LL. D.
BY HIS AFFECTIONATE CONGREGATION,
IN TESTIMONY
OF THEIR GRATITUDE FOR HIS FAITHFUL ATTENTION
TO THEIR SPIRITUAL IMPROVEMENT,
AND FOR HIS PECULIAR DILIGENCE
IN TRAINING UP THEIR YOUTH
TO RATIONAL PIETY AND GENUINE VIRTUE;
OF THEIR RESPECT FOR HIS GREAT AND VARIOUS TALENTS,
WHICH WERE UNIFORMLY DIRECTED TO THE NOBLEST PURPOSES;
AND OF THEIR VENERATION
FOR THE PURE, BENEVOLENT, AND HOLY PRINCIPLES,
WHICH, THROUGH THE TRYING VICISSITUDES OF LIFE,
AND IN THE AWFUL HOUR OF DEATH,
ANIMATED HIM WITH THE HOPE
OF A BLESSED IMMORTALITY.
HIS DISCOVERIES AS A PHILOSOPHER
WILL NEVER CEASE TO BE REMEMBERED AND ADMIRED
BY THE ABLEST IMPROVERS OF SCIENCE.
HIS FIRMNESS AS AN ADVOCATE OF LIBERTY,
AND HIS SINCERITY AS AN EXPOUNDER OF THE SCRIPTURES,
ENDEARED HIM TO MANY
OF HIS ENLIGHTENED AND UNPREJUDICED CONTEMPORARIES.
HIS EXAMPLE AS A CHRISTIAN
WILL BE INSTRUCTIVE TO THE WISE, AND INTERESTING TO THE GOOD
OF EVERY COUNTRY AND EVERY AGE.
HE WAS BORN AT FIELDHEAD, NEAR LEEDS, IN YORKSHIRE,
MARCH 13th, A. D. 1733,
WAS CHOSEN A MINISTER OF THIS CHAPEL, DEC. 31st, 1780,
CONTINUED IN THAT OFFICE TEN YEARS AND SIX MONTHS,
EMBARKED FOR AMERICA APRIL 7th, 1794.
DIED AT NORTHUMBERLAND TOWN IN PENSYLVANIA,
FEBRUARY 6th, 1804.

SACRED TO THE MEMORY
OF GEORGE LLOYD, ESQ. LATE OF MANCHESTER,
BARRISTER,
WHO DIED AT BATH OCTOBER THE 12th, 1804,
IN THE 55th YEAR OF HIS AGE.
THIS EXCELLENT MAN WAS LONG AND JUSTLY ENDEARED
TO HIS FAMILY,
BY TENDERNESS AS A HUSBAND,
AND KINDNESS AS A FATHER;
TO HIS ACQUAINTANCE,
BY THE GENTLENESS OF HIS TEMPER,
AND THE SUAVITY OF HIS MANNERS;
AND TO HIS NUMEROUS AND RESPECTABLE FRIENDS,
BY THE ARDOUR, THE SINCERITY,
AND THE STEADINESS OF HIS ATTACHMENTS.
IN THE APPLICATION OF HIS GENERAL KNOWLEDGE
TO THE CHARACTERS OF MEN AND THE EVENTS OF LIFE,
HE PRESERVED THAT RARE AND HAPPY UNION
OF CORRECTNESS AND LIBERALITY,
WHICH IS THE SUREST CRITERION OF A MIND
VIGOROUS FROM NATURE,
COMPREHENSIVE FROM REFLECTION,
AND VIRTUOUS FROM PRINCIPLE.
IN THE DISCHARGE OF HIS PROFESSIONAL DUTIES
HE WAS DESERVEDLY CELEBRATED
FOR THE SOUNDEST JUDGMENT,
AND THE STRICTEST INTEGRITY.

HIS CONVERSATION
WAS AT ONCE AGREEABLE AND INSTRUCTIVE,
FROM THE QUICKNESS AND VARIETY OF HIS CONCEPTIONS,
THE ACUTENESS AND ACCURACY OF HIS REASONING,
AND THE PERSPICUITY,
EXACTNESS, AND ELEGANCE OF HIS DICTION.
HIS PATRIOTISM WAS NEITHER WARPED BY PREJUDICE,
NOR TAINTED BY FACTION,
NOR STAGGERED BY REAL OR IMAGINARY DANGER.
HIS BENEVOLENCE WAS ENLARGED WITHOUT SINGULARITY,
AND ACTIVE WITHOUT OSTENTATION.
HIS FORTITUDE WAS ALIKE UNSHAKEN
BY THE PRESSURE
OF A LINGERING AND COMPLICATED DISEASE,
THE CONSCIOUSNESS
OF PROGRESSIVE AND INCURABLE BLINDNESS,
AND THE EXPECTATION OF APPROACHING DEATH.

CATHERINE JANE PARR,
YOUNGEST DAUGHTER OF SAMUEL AND JANE PARR,
WAS BORN AT NORWICH, JUNE 13th, 1782,
DIED AT EAST TEIGNMOUTH, DEVON, NOV. 22nd, 1805,
AND ON DECEMBER 9th WAS BURIED IN THIS CHANCEL,
WHERE THE REMAINS OF HER AFFLICTED PARENTS
WILL HEREAFTER BE DEPOSITED,
AT THE REQUEST OF A MOST BELOVED CHILD,
WHOM THEY HOPE TO MEET AGAIN
AT THE RESURRECTION OF THE JUST
TO LIFE EVERLASTING.

QUAE . TEMPLO . CATHERINA . IN . HOC . SEPULTA . EST
"PRUDENS . CASTA . DECENS . SEVERA . DULCIS
DISCORDANTIA . QUAE . SOLENT . PUTARI
MORUM . COMMODITATE . COPULAVIT
NAM . VITAE . COMITES . BONAE . FUERUNT
LIBERTAS . GRAVIS . ET . PUDOR . FACETUS"
HIS . EST . JUNCTUS . AMOR . PIUS . SUORUM
ET . CURA . EX . ANIMO . DEUM . COLENDI.

Mrs. SARAH ANNE WYNNE,
THE INGENIOUS AND BELOVED DAUGHTER
OF SAMUEL AND JANE PARR,
WAS BORN AT STANMORE IN MIDDLESEX,
DEC. 31st, 1772,
DIED AT HATTON, JULY 8th, 1810,
AND WAS INTERRED ON THE 18th IN THIS CHANCEL,
BETWEEN THE REMAINS OF HER SISTER
CATHARINE JANE PARR
AND HER THIRD DAUGHTER MADALINA WYNNE,
WHO DEPARTED THIS LIFE, MAY 26th, 1810,
AGED TWO YEARS, EIGHT MONTHS, AND NINE DAYS.

WITHIN THESE WALLS
ARE DEPOSITED
THE REMAINS OF THE REV. EDWARD BOLTON,
RECTOR OF THIS PARISH,
AND CHAPLAIN IN ORDINARY TO HIS MAJESTY.
THROUGH A LONG AND VIRTUOUS LIFE
HE MAINTAINED WITH FIRMNESS BUT WITH MILDNESS
THE PURE CHARACTER OF A CHRISTIAN MINISTER;
WITH UNBOUNDED TENDERNESS
THE TIES OF CONJUGAL AND PARENTAL AFFECTION;
WITH IMPARTIAL JUSTICE THE DIGNITY OF A MAGISTRATE;
AND WITH UNSHAKEN CONSTANCY
THE WARMTH OF SINCERE FRIENDSHIP.
ON THE DAY OF DECEMBER,
IN THE YEAR OF OUR LORD 1810,
AND 81st OF HIS AGE,
HE CALMLY RESIGNED HIS SOUL
TO HIS MERCIFUL CREATOR.

RICHARD INGRAM, ESQ.,
A NATIVE OF ST. PAUL'S PARISH, COVENT GARDEN, LONDON,
FORMERLY A MEMBER OF PEMBROKE COLLEGE, OXFORD,
AFTERWARDS A STUDENT AT LINCOLN'S INN,
AND FOR MORE THAN FORTY YEARS
AN INHABITANT OF WHITE LADIES, NEAR WORCESTER,
DIED OCTOBER 20th, 1811,
AGED 63,
AND WAS INTERRED IN THE BURYING-GROUND
OF THIS CHAPEL.
INDEPENDENT IN SPIRIT AS WELL AS FORTUNE,
AND UNAMBITIOUS ALIKE OF STATION AND OF FAME,
HE PREFERRED
THE PURE AND CALM PLEASURES OF A STUDIOUS LIFE,
TO THE BRIGHTEST PROSPECT OF SUCCESS IN THE LAW,
FOR THE PRACTICE OF WHICH
HE HAD BEEN CALLED TO THE BAR IN 1771.
HE WAS A PROFOUND SCHOLAR WITHOUT PEDANTRY,
AN ACUTE CRITIC WITHOUT ACRIMONY,
UNWEARIED IN HIS RESEARCHES
UPON THE MOST INTERESTING SUBJECTS OF THEOLOGY AND ETHICS,
UNSHAKEN IN HIS ATTACHMENT
TO THE NOBLEST PRINCIPLES OF CIVIL AND RELIGIOUS LIBERTY,
EXEMPLARY IN UNITING THE DUTIES OF JUSTICE
WITH THE DELICACIES OF HONOUR,
AND ALL THE AMIABLE GRACES OF NATIVE BENEVOLENCE.
SINCERE WITHOUT BIGOTRY
IN THE BELIEF OF A REDEEMER,
AND SERIOUS WITHOUT SUPERSTITION
IN THE WORSHIP OF HIS CREATOR.

ON THE TWENTY-EIGHTH DAY OF AUGUST, A.D. 1812,
DIED AT BRADENHAM, NEAR HIGH-WYCOMBE, BUCKINGHAMSHIRE,
IN THE 85th YEAR OF HER AGE,
ELIZABETH DEALTRY,
ELDEST DAUGHTER OF RICHARD LANGLEY, ESQ.
OF WYKEHAM ABBEY IN YORKSHIRE,
AND RELICT OF JOHN DEALTRY,
ONCE THE HIGHLY-FAVOURED PUPIL
OF THE CELEBRATED DR. BOERHAAVE,
AND AFTERWARDS AN EMINENT PHYSICIAN IN THE CITY OF YORK.
THE MEMORY OF THIS EXCELLENT WOMAN WAS RETENTIVE,
HER JUDGMENT WAS EXACT,
AND THE KNOWLEDGE WHICH SHE HAD ACQUIRED FROM BOOKS
WAS BOTH ORNAMENTAL AND USEFUL,
DIFFUSING ITSELF WITHOUT OSTENTATION
OVER THE GAYEST AND MOST SERIOUS SUBJECTS,
AND ADAPTING ITSELF WITHOUT EFFORT
TO THE LIGHTER AND MORE IMPORTANT CONCERNS OF SOCIAL LIFE.
HER PENETRATION
INTO THE CHARACTERS OF THOSE WITH WHOM SHE CONVERSED
WAS ACUTE, NOT PRECIPITATE:
HER REMARKS
UPON ALL THEIR PROMINENT AND ALL THEIR LATENT VARIETIES
WERE LUMINOUS FROM GOOD SENSE,
NOT DAZZLING FROM REFINEMENT:
IN THE DISTINCTIONS WHICH SHE MADE
BETWEEN MERIT AND DEMERIT,
HER UNDERSTANDING
WAS NEITHER MISLED BY PREJUDICE NOR WARPED BY ENVY:
HER PRAISE WAS APPROPRIATE WITHOUT EXAGGERATION,

AND HER CENSURE WAS SIGNIFICANT WITHOUT ASPERITY.
FORMED BY THAT PLAN OF FEMALE EDUCATION
WHICH PREVAILED IN THE REIGN OF GEORGE II.,
HER MANNERS WERE AGREEABLE AND EVEN IMPRESSIVE
FROM DIGNIFIED EASE AND UNIFORM PROPRIETY.
SHE UNITED THE MOST UNRUFFLED TEMPER
WITH THE MOST DELICATE SENSIBILITY.
BY PROMOTING IN HER FAMILY AND HER NEIGHBOURHOOD
THOSE INNOCENT RECREATIONS,
WHICH ARE SUITED TO THE VIVACITY OF YOUTH,
AND THE CHEERFULNESS OF MANHOOD,
SHE THREW AROUND OLD AGE
AN ASPECT AT ONCE AMIABLE AND VENERABLE.
HER MORALS WERE NOT ONLY BLAMELESS BUT EXEMPLARY;
AND, AS HER PRINCIPLES IN RELIGION WERE THE RESULT
OF JUDICIOUS INQUIRY AND FREQUENT MEDITATION,
THEY WERE EXEMPT ALIKE FOM THE WEAKNESS OF SUPERSTITION
AND THE REVERIES OF FANATICISM:
THEY SOFTENED THE HEART, WHILE THEY ENLIGHTENED THE HEAD:
THEY REGULATED HER ACTIONS IN THIS WORLD,
AND THEY ELEVATED HER HOPES TO A FUTURE AND BETTER STATE.
FOR MORE THAN THE SPACE OF 20 YEARS
SHE WAS AFFLICTED WITH BLINDNESS,
AND FOR 3 YEARS WITH PALSY.
BUT THESE EVILS, WHICH, AMONG THE GENERALITY OF MANKIND,
MIGHT HAVE CLOUDED THE BRIGHTNESS OF EVERY JOY,
AND DEEPENED THE GLOOM OF EVERY SORROW,
WERE BORNE BY HER
WITH THE STEADY FORTITUDE OF A HEROINE,
AND THE HUMBLE PATIENCE OF A CHRISTIAN.
SHE RETAINED HER WONTED RELISH
FOR THE PLEASURES OF SOCIAL INTERCOURSE:

SHE PRESERVED THE UNIMPAIRED AND READY USE
OF HER INTELLECTUAL FACULTIES,
AND WITH THE ASSISTANCE OF HER CHILDREN, AS READERS TO HER,
SHE OBTAINED FOR HER CURIOSITY
THE CHOICEST GRATIFICATIONS WHICH BOOKS COULD SUPPLY:
SHE WAS RESCUED FROM THE ALTERNATE VICISSITUDES
OF MELANCHOLY AND INQUIETUDE,
WHICH OFTEN ACCOMPANY THE LOSS OF SIGHT
AND DEBILITY OF LIMBS;
AND TO HER HABITS OF OBSERVATION
UPON THE EVENTS OF EARLIER AND HAPPIER TIMES,
SHE DAILY ADDED FRESH STORES OF INFORMATION,
AND FOUND IN THEM FRESH MATERIALS
FOR CALM AND SOLID REFLECTION.
SURROUNDED BY THE RESPECT OF HER ACQUAINTANCE,
BY THE GRATITUDE OF HER DOMESTICS,
BY THE CONFIDENCE OF HER FRIENDS,
AND BY THE MOST TENDER AFFECTION, AND DUTIFUL ATTENTIONS
OF AN ELDEST SON, (THE ONLY SURVIVOR OF TWO INFANT BROTHERS)
AND ALSO OF TWO DAUGHTERS,
ALL OF WHOM HAD RESIDED WITH HER FROM THEIR YOUTH,
AND WHO FELT THEIR OWN HAPPINESS INSEPARABLY CONNECTED
WITH THE COMFORTS AND ENJOYMENTS
OF A MOST DESERVING PARENT,
SHE SUNK WITHOUT A STRUGGLE
UNDER THE INSTANTANEOUS AND SILENT STROKE OF THAT DEATH,
THE APPROACH OF WHICH SHE HAD LONG CONTEMPLATED
WITH UNFEIGNED AND UNSHAKEN RESIGNATION
TO THE WILL OF HER CREATOR.

IN THIS CHANCEL LIE THE REMAINS
OF THE REV. ROBERT PARR, A. M.
FORMERLY FELLOW OF MAGDALEN COLLEGE, OXFORD,
AND VICAR OF MODBURY, DEVONSHIRE,
AFTERWARDS RECTOR OF ST. LAWRENCE, NORWICH,
FOR TWENTY-SEVEN YEARS WITHIN NINETEEN DAYS,
AND OF HEIGHAM FOR THIRTY-ONE YEARS WITHIN SIX DAYS,
WHO DIED JUNE 3rd, A. D. 1812, AGED 71.
HIS CONVERSATION WAS CHEERFUL WITHOUT LEVITY,
HIS MANNERS WERE AGREEABLE WITHOUT ART,
HIS INTEGRITY WAS INFLEXIBLE,
HIS PIETY WAS SINCERE.
HIS MEMORY WILL LONG BE REVERED
BY HIS PARISHIONERS, FRIENDS, AND RELATIONS,
AND DEEPLY WILL HIS LOSS BE DEPLORED
BY THE UNFORTUNATE,
WHOM HE WAS ACCUSTOMED TO CONSOLE,
AND BY THE INDIGENT,
WHOM HE WAS EVER READY TO RELIEVE.
ELIZABETH, FIRST WIFE OF THE REV. ROBERT PARR,
AND ONLY DAUGHTER
OF HENRY SMITH, ESQ. OF COLTISHALL, NORFOLK,
DIED JULY 2nd, A. D. 1797,
AGED 54,
AND IS BURIED
IN THE SAME VAULT WITH HER HUSBAND.

THIS MONUMENT WAS ERECTED,
BY THREE SURVIVING BROTHERS AND A SISTER,
TO THE MEMORY OF
THE AMIABLE AND ACCOMPLISHED
SUSANNAH LOWNDES,
ELDEST DAUGHTER OF THE LATE
RICHARD AND SUSANNAH LOWNDES
OF LIVERPOOL,
SHE WAS BORN IN THAT TOWN, 12th AUGUST, 1794,
DIED AT WARWICK, ON THE 19th FEBRUARY, 1813,
AND ON THE 26th WAS BURIED AT THE ENTRANCE
OF THIS CHANCEL.

WITH WATER DRAWN FROM THIS WELL,
RICHARD THE THIRD, KING OF ENGLAND,
ALLAYED HIS THIRST,
WHILE FIERCELY AND WITH DEADLY HATRED
HE WAS WAGING BATTLE WITH
HENRY EARL OF RICHMOND,
AND WHEN HE WAS DOOMED BEFORE NIGHT
TO LOSE HIS SCEPTRE AND HIS LIFE.
AUGUST 22, 1485.

TO THE MEMORY
)F AN AFFECTIONATE MOTHER, AN EXEMPLARY CHRISTIAN,
MRS. ELIZABETH THACKERAY,
VHO WAS RELICT OF THE LATE FREDERICK THACKERAY, M. D.
OF WINDSOR, BUCKS;
DIED AT LEAMINGTON, OCT. 11th, A. D. 1816, ÆTAT. 80,
AND WAS BURIED IN HATTON CHURCH
ON THE FOLLOWING SUNDAY.
THIS MONUMENT IS ERECTED
Y HER GRATEFUL, DUTIFUL, AND AFFECTIONATE CHILDREN,
LOUISA THACKERAY,
AND THE REV. GEORGE THACKERAY, D. D. PROVOST OF
KING'S COLL. CAMBRIDGE.

I GIVE THIS BOOK
TO MY FRIEND DUGALD STEWART,
AS A MARK OF MY REGARD AND VENERATION
FOR A WRITER, WHO STANDS NEXT TO LORD BACON,
IN THE RARE AND EXQUISITE TALENT
OF UNITING ELEGANCE WITH PHILOSOPHY.

DEC. 3, 1819, HATTON. SAMUEL PARR.

SACRED TO THE MEMORY
OF
MATTHEW BOLTON, F. R. S.
BLESSED BY THE KINDNESS OF PROVIDENCE
WITH PROSPERITY, HEALTH, AND LENGTH OF DAYS,
HE WAS REGARDED BY THE POOR AS THEIR PROTECTOR,
BY THE INDUSTRIOUS AS THEIR EMPLOYER,
AND BY THE SKILFUL AS THEIR PATRON;
HE WAS BELOVED BY HIS FRIENDS
FOR THE BENEVOLENCE OF HIS DISPOSITION;
HE WAS RESPECTED BY ALL HIS NUMEROUS CONNECTIONS
FOR THE RECTITUDE OF HIS MORAL CONDUCT;
AND IN HIS OWN AND FOREIGN COUNTRIES
HE WAS JUSTLY CELEBRATED
FOR THE ELEGANCE OF HIS TASTE
AND THE INGENUITY OF HIS INVENTIONS.

WITH FEELINGS OF SINCERE AND JUST RESPECT
FOR THE CULTIVATED UNDERSTANDING
AND THE EXALTED RANK
OF
THE DUKE OF SUSSEX,
DR. PARR REQUESTS
THAT HIS ROYAL HIGHNESS
WOULD BE PLEASED TO ACCEPT THIS LITTLE BOOK,
AS A TRIBUTE OF DUTIFUL ATTACHMENT,
AND OF GRATITUDE UNFEIGNED,
FOR THE NUMEROUS ATTENTIONS
WITH WHICH HIS ROYAL HIGHNESS
HAS CONDESCENDED TO HONOUR DR. PARR.

TO THE MEMORY
OF ROBERT BARTLAM, GENT.,
WHO DIED AT ALCESTER, THE 21st,
AND WAS BURIED 25th JULY, 1821, AGED 52.
HE WAS INFLEXIBLY UPRIGHT AS A SOLICITOR,
HOSPITABLE AS A NEIGHBOUR,
FAITHFUL AS A FRIEND,
AFFECTIONATE AS A RELATIVE:
HE RECONCILED THE ANGRY,
RELIEVED THE NEEDY,
PROTECTED THE OPPRESSED,
AND WALKED HUMBLY WITH HIS GOD.

ALSO OF THE REV. JOHN BARTLAM, M. A.
FORMERLY FELLOW OF MERTON COLL. OXFORD,
VICAR OF BEOLY, IN THE COUNTY OF WORCESTER,
AND OF PONTELAND,
IN THE COUNTY OF NORTHUMBERLAND.
HE DIED IN LONDON, FEB. 27th,
AND WAS BURIED HERE, MARCH 7th, 1823, AGED 52.
HE WAS AN ELEGANT SCHOLAR,
AN AMIABLE COMPANION,
A SINCERE AND ARDENT FRIEND,
AND A TRULY UPRIGHT AND BENEVOLENT MAN.
THIS TABLET WAS ERECTED
BY THEIR AFFECTIONATE BROTHER
THE REV. THOMAS BARTLAM, M. A. PRECENTOR OF EXETER.

ON THE NORTH SIDE OF THIS CHANCEL LIETH THE BODY
OF MRS. JANE PARR,
WHO DIED AT TEIGNMOUTH, DEVON,
APRIL 9th, IN THE YEAR 1810,
AGED 63;
AND NEXT ARE DEPOSITED THE REMAINS OF HER HUSBAND
THE REV. SAMUEL PARR, LL. D.
WHO FOR 39 YEARS
WAS RESIDENT AND OFFICIATING MINISTER OF THIS PARISH
AND WHO DIED ON THE 6th OF MARCH, IN THE YEAR 1825,
AGED 78.
CHRISTIAN READERS!
WHAT DOTH THE LORD REQUIRE OF YOU,
BUT TO DO JUSTICE, TO LOVE MERCY,
TO BE IN CHARITY WITH YOUR NEIGHBOURS,
TO REVERENCE YOUR HOLY REDEEMER,
AND TO WALK HUMBLY WITH YOUR GOD?

ILLUSTRATIONS

OF THE

PRECEDING INSCRIPTIONS;

To which are added the names of places where they were set up, as correctly noted as could be obtained,—still, it is feared, imperfectly.

PAGE 559.

THE inscription for Dr. Thackeray was solicited by his learned descendant the present Dr. Thackeray of Chester. It was never, we believe, inscribed on his tomb.

PAGE 560.

Written on the fly-leaf of the Aristarchus of Vossius. It is probably the earliest specimen of Dr. Parr's composition in this style of writing now to be found; having been written while he was an under-graduate at Emanuel college. A learned friend of the Editor suggests, that the word TANTUM, in line 5, must be an error of the transcriber.

PAGE 561.

In the chancel of Hatton Church, to the memory of Dr. Parr's immediate predecessor in that Cure.

PAGE 562.

On a mural tablet in the Church of Harrow on the Hill.

PAGE 563.

In a volume entitled, "Sententiæ Phil. Melancthonis, Martini Buceri, Casp. Hedionis, et aliorum in Germaniâ Theologorum de pace Ecclesiæ; ad virum nobilissimum Gulielmum Bellaium Langæum, &c. 1534."

PAGE 564.

On a tablet of white marble in Worcester Cathedral.

PAGE 565.

At Norwich.

PAGE 566.

DR. JOHNSON'S MONUMENT, IN ST. PAUL'S.

DEAR PARR, *Maddox Street, January 15th*, 1790.

Should you like to undertake an Edition of Dr. Johnson's Works, with his Life, and a Critique on his Writings? The first Edition of them is nearly sold, and Mr. Cadell would be glad to have them edited by a scholar, and an admirer of poor Johnson.

Let me know as soon as possible what you think of my proposal.

I wish, too, you would turn your thoughts upon an Epitaph for Johnson's intended Monument.

Yours, W. SEWARD.

DEAR PARR, *May* 25, 1791.

You say nothing about Johnson's Epitaph. Sir Joshua Reynolds desires me to iterate his request to you to write it. Boswell and myself add our solicitations. Why will you not do it? Compliments to Mrs. Parr.

Yours very truly, W. SEWARD.

Dr. Parr, to Sir Joshua Reynolds.

DEAR SIR,

This is a strictly confidential letter, and I entreat you to communicate the contents of it to no man living, except Mr.

Windham; in the soundness of whose judgment, and the delicacy of whose honour I can implicitly and entirely confide. Seward, enforcing his own request by the names of yourself and Mr. Boswell, has urged me to write Johnson's Epitaph. Fairly and fully I have stated to him the difficulty of the task; and because it is difficult I have prudently, and I hope politely, declined it.

Believe me, however, when I tell you that I am not without a most awful and most painful sense of the situation in which I stand.

To the memory of Johnson I, as a scholar and as a man, owe every thing; and to the wishes of Sir Joshua Reynolds there is scarcely anything which I can with propriety refuse. Permit me, then, to lay before you the reasons which dissuade, and even deter me from undertaking to do at all, what I despair of doing well.

Johnson was a great writer, an accurate scholar, and a good man. Upon his correct and profound knowledge of the Latin language, I have always spoken with unusual zeal and unusual confidence, in opposition to the cavils of Monboddo, and to the insinuations of Joseph Warton. Whatever may have been the success of his efforts in Latin epitaphs, he had most just notions of the art itself; and my opinion is, that beyond all other men in the world, he has a right to such an inscription as perfectly corresponds with his ideas of the art, and his skill in Latinity.

Now the question is, from whom such an inscription is to be obtained? In regard to myself, I distrust my own abilities to perform what is excellent, in proportion as I understand in what excellence consists.

Already have I told Seward of my objections to the lapidary style; and yet this, unfortunately, is the style in which almost all modern epitaphs are composed. Novelty itself, therefore, will wear the appearance of singularity, and singularity will be imputed to pedantry, or to ignorance. What is simple, may be generally unintelligible and unpleasing; and what is not simple, will in my judgment be grossly improper. Besides, the peculiarity and the amplitude of Johnson's character cannot, I fear, be luminously described in that diction which I should think

myself authorised to employ. Even the most marked and splendid phraseology which usually appears upon epitaphs, would be offensive to my taste, and, among real scholars, would be degrading to my reputation. Terence, Cæsar, Livy, Tacitus, and even Cicero, whose writings are the common storehouse of modern Latinity, are according to my apprehensions, merely a *plebs superûm* upon such an occasion. Simple must be the form of the whole epitaph, simple must be every phrase. But that which is simple will appear neither striking nor proper to the numerous class of readers, especially where every reader will think himself a critic.

The inscription itself may be written according to the best Latin models; but the man upon whom it is written is an English writer, and every enlightened English reader will therefore expect to find something which he has found before, in the trite and popular language of modern epitaphs. Yet they cannot find it, if the sentiments, or if the words, or if the construction be suited to that charming simplicity, which alone I see in the epitaphs of antiquity, and which alone I can persuade myself to adopt upon a modern subject. If Latin is to be the language, the whole spirit and the whole phraseology ought to be such as a Latin writer would use.

To a man of your most elegant taste and most deep judgment, this statement of my opinions will, I am sure, not appear unimportant; and such too is your candour, that you will readily acquit me of all affectation in explaining what ought to be attempted, and of all hypocrisy in confessing my inability to attempt it successfully. However, if your general sentiments upon the business coincide with my own, I will hazard the attempt. At the same time, I beseech you not to say one word of my conditional compliance.

At present I am busy in a different way; but in the course of next month I will think upon the subject, and throw myself into a right train of reading. If I should, in any moderate degree, satisfy myself, I will send you what occurs to me; and if otherwise, I shall confess to you the plain truth. In the mean time, I desire you to inform me of the very day upon which Johnson was born, and how old he was when he died. You will also be so good as to inform me, in a general way, by whom the money

was subscribed for his monument; because all these circumstances may influence my mind when I write his epitaph, and I shall not even begin to write it till I know them.

I hope that you will, under a strict charge of secrecy, lay the contents of this letter before Mr. Windham, and ask his opinion about them. Should you and he approve of what I may hereafter send, I take it for granted that you will both of you employ your high authority in explaining the principles upon which the epitaph may be written. On the other hand, should you disapprove of it, I conjure you to deal openly with me. In the world I shall not suffer, because the world has no right to know of my miscarriage; neither can I suffer in your estimation, or in Mr. Windham's, because with this proof of my willingness to do what is right, you will connect the remembrance of the diffidence I feel in my own capacity for doing it.

I have the honour to be, dear Sir, with the greatest respect your faithful and obedient servant, S. PARR.

Sir Joshua Reynolds, to Dr. Parr.

DEAR SIR, *London, May* 31*st*, 1791.

I felt myself much flattered in receiving a letter from Dr. Parr, and still more by its being a long one, and more still by the confidence which you have been pleased to repose in me: I may add, likewise, that a man is most successfully flattered by being supposed to possess virtues to which he has the least pretensions.

My critical skill, alas! I am afraid is entirely confined to my own profession. It would be in me the highest degree of impertinence to speak of your superior qualifications for this business as from my own judgment: it is my learned friends who have universally pointed you out as the only man qualified in all points for this task. That it is an arduous task I am well aware, and that you are alarmed at the difficulty is a presumption in favour of what may be expected from your head.

A blind horse starts at no precipice. I have heard you speak of Dr. Johnson, and am therefore confident that you have nothing to seek in regard to sentiment; and in regard to your ability of expressing those sentiments in Latin, nobody has any

doubt. You have, therefore, nothing to do but "*skrew your courage to the sticking place, and we'll not fail.*" Since I have stumbled by accident on this passage in Macbeth, I cannot quit it without observing that this metaphor is taken from a wheel engine, which, when wound up, receives a check that prevents it from running back. The only check that I can imagine to prevent you from retreating from what I wish to consider as a private half-promise, would be its being publicly known that you had undertaken it. And then, as Dr. Johnson used to say, "what must be done, will be done."

I do not at all wonder at your being terrified at the difficulty: I am inclined to think that it is the most difficult of all compositions. Perhaps it is impossible to write an epitaph that shall be universally approved; or that shall not be open to some objection on one side or the other: even men of the best and most refined taste, are often unreasonable in their demands, and require (as I have seen connoisseurs do) an union of excellencies incompatible with each other.

The simplicity which you intend to adopt, and which is perfectly congenial to my own taste, will be criticised that it is not the lapidary style, that it wants dignity and stateliness, and so *vice versâ.*

Though I have great abhorrence of pertness or quaintness, either in the style or sentiment, yet perhaps an epitaph will admit of something of the epigrammatic turn. I remember once having made this observation to Edmund Burke, that it would be no bad definition of one sort of epitaphs, to call them grave epigrams. He repeated the words "*grave* epigrams," and gave me the credit of a pun, which I never intended.

I have no doubt but that you are surprised to receive a letter in this form. The truth is, this was intended only as a rough draft, but the weakness of my eyes must prove my excuse in not writing it over fair.

I shall enclose, if it will not make too large a packet for the post, the list of subscribers.

I am, with the greatest respect,
Your most humble and most
obedient servant,
JOSHUA REYNOLDS.

Dr. Johnson,
born Sept. 18, 1709,
died Dec. 13, 1784.

Dr. Parr, to Sir Joshua Reynolds.

DEAR SIR, *May*, 1791.

Necessity, in the strict and metaphysical sense of the word, governs perhaps the actions and fortunes of us all. But there is a more lax and popular signification, under which Johnson was content to know it experimentally. When he told you that what must be done will be done, he spoke not only from general observation, but from his own particular feelings: thus, I am told that he never would engage to write without pay from a bookseller; but I have always written from very different motives: he was lazy, and therefore seldom wrote from choice; but I am whimsical, and never will write through compulsion: he was a Tory, and perhaps found some music in the sound; but I am a Whig, and shrink from it as a harsh and ill-omened word. Feeling then, and perhaps cherishing, this antipathy to force, I shall not surprise you by chopping down my supposed half promise to no promise at all, or by requesting that what hitherto has been private between you and me, may not hereafter be made public, till we understand each other more clearly, and agree with each other more closely, upon the sort of style that is to be adopted for Johnson's epitaph. I may perhaps find myself obliged to explain again and again before I convince, and therefore I entreat you not to charge to a spirit of self-importance that caution which in reality, dear Sir, I employ only for purposes of self-defence. Different men, it is true, have different powers and different tastes; but, surely, among all the wild caprices of criticism, there is something like rule to be found, and to certain species of writing there are certain forms of composition: a tragedy must be elevated above common discourse, a comedy must descend a little nearer to it; an epic poem must always be grand, and a descriptive brilliant. To my mind, there is no less certainty about the diction which should be employed in a Latin epitaph: for custom in this, as in all other respects, must fix the opinions of men who are judges of the art. In modern languages the greatest latitude may be given to the choice of the writer, but in the use of the ancient languages, prescription holds an indisputable and unlimited sway. The difficulty at present arises from the small

number of those who know what prescription requires, and from the great number of those who will take upon themselves to judge without knowing it. In the kind of epitaph which alone would please me, the words would be so plain that every sciolist might understand them; the construction so plain that every school-boy might hope to imitate it; the topics so plain that every garreteer would give himself credit for selecting them without effort; and the whole so plain that he who runs might read, he who reads will think that he understands, and he that understands will be disposed to condemn. For the adoption of this style I have not yet received the sanction of your approbation. I readily agree with you that for epitaphs, unless they are written in the language of antiquity, there are many kinds of style, and equally good. I would include in them what you with great felicity call a grave epigram; and if you got credit with Burke for a pun which you did not intend, you have the lot of many other writers, where the comment is wide of the text; and your observation resembles the prophecies and oracles of old, about which we have often been gravely informed, that the words had often a profound and mysterious meaning, quite unsuspected by those who uttered them. Permit me, however, to say that I have no talent for these grave epigrams, and that to the lapidary style, which most of the readers would like, and which I should find it far easier to write, my objections are innumerable and insurmountable.

In epitaphs, as well as other kinds of composition, dignity is compatible with simplicity, and whether they are united or not depends upon the abilities of the person who composes them. The real fact, in this case, is that every body will see what is simple, and that few will feel what is dignified; and hence arises the difficulty which scares my mind, and holds me in a state of painful and mortifying suspense. It is very disagreeable for me to give you the trouble of reading my letters, and to hold back, as I yet continue to do, from a positive engagement: however, I will absolve you from all unnecessary delicacy with me, by leaving you and the friends of Johnson at perfect liberty to apply to any other scholar, whose apprehensions may be less, and his talents greater. In the meantime, I could wish you to consult some of your learned friends upon the propriety of ex-

cluding the lapidary style; and if the subject should be started at the next meeting of the club, something may occur which, if communicated to me, may enable me to come to some decision, and either attempt what I wish to do, or leave it undone. I thank you for sending me a list of subscribers; and if I should hereafter prevail upon myself to undertake what you request, I should wish to know the size and form of the stone upon which the inscription is to be engraved.

S. PARR.

DEAR SIR, *June* 23, 1791.

Without the formality of waiting for your answer, I have attempted what you wished me to do; and the execution, I should hope, is such as will disgrace neither the memory of Johnson nor the choice of his friends. The epitaph is written, I think, with more than ordinary conformity to the best models of antiquity, for it is plain, concise, full enough, and, in my opinion, not less than enough dignified. I have read nearly two thousand inscriptions, not for the petty drudgery of gleaning scattered phrases, but for the nobler purpose of familiarizing my ear, my eye, and my mind, to the general structure of the composition, and to the proper selection of topics.

I consider myself as disengaged from all obligation to use it, till you, and those whom you consult, agree with me in my favourite principle of avoiding what is reprobated by real scholars under the name of the lapidary style. Nor will I shew the inscription to any human being, till I know your and their determination. You will give me leave to observe, that much will depend upon the taste, and more upon the fidelity and docility of the engraver. Circumstances of this kind will not appear wholly uninteresting to a man, who, like yourself, must be acquainted with the coarse indignity which has been offered to the monument of Raphael.

I have the honour to be, with the greatest respect, dear Sir, your most obedient, faithful servant, S. PARR.

From Sir Joshua Reynolds.

DEAR SIR, *London, July* 11, 1791.

You may depend on having all your injunctions, relative to the inscription, punctually obeyed. We have great time before us. The statue is hardly yet begun, so that the inscription will not be wanted for at least these twelve months: in the meantime, you will probably have an opportunity of seeing the monument itself, and the place which it is to occupy in St. Paul's.

There would be, I think, a propriety in having on the scroll a Greek sentence, as it would imply at first sight that it is the monument of a scholar. Dr. Johnson was Professor of Ancient Literature to the Royal Academy. I could wish that this title might be on the monument: it was on this pretext that I persuaded the Academicians to subscribe a hundred guineas. But I do not want to encroach on your department: you must ultimately determine its propriety.

I do not think that in any of my letters I have mentioned Mr. Windham's name, which looks as if we did not see each other as often as we used to do, but this is not the case; I have shewn him all your letters, but as he expressed only general approbation, and the propriety of the whole being left to your judgment, I neglected telling you as much, which still I ought to have done.

I sent to Bacon the sculptor, to desire he would send me a sketch of the monument, which, if it comes in time, I will enclose it in this letter; if not, I will take the first opportunity of sending it to you.

I confess I am rather impatient to see the inscription; but still, not so much so as to wish in the least to break in upon any determination of yours. I must wait, likewise, for your orders respecting Mr. Seward; as he has been active in this business, one would wish not to mortify him by neglect.

I am, with the greatest respect, yours sincerely,

J. REYNOLDS.

From Edmond Malone, Esq.

DEAR SIR, *Queen Anne St. East, March* 25, 1795.

I have understood that you, some years ago, were so good as to promise our late most excellent friend, Sir Joshua Reynolds, an inscription for Dr. Johnson's monument. The monument being now nearly finished and ready to be put up, the gentlemen who have had the conduct of it, have requested me to apply to you for the epitaph, if you should have written one for this very extraordinary man.

Believe me, dear Sir, with sincere regard, your most faithful obedient servant, EDMOND MALONE.

DEAR SIR, *Queen Anne St. East, April* 3, 1795.

I am sure it is unnecessary to tell you that it was not from any want of attention or respect that I did not immediately answer your letter. The truth is, I wished to consult some of the gentlemen to whom the management of Dr. Johnson's monument has been assigned, and had not an opportunity of doing so till yesterday. The epitaph which you have written will, I have no doubt, be every thing that they could wish; but as they and the surviving executor (Sir Wm. Scott) cannot properly adopt any inscription without seeing and approving it, and as you might possibly not chuse to submit it at all to their inspection, unless upon a certain *assurance* of its being adopted, I thought it right to state this circumstance to you before you transmitted the epitaph. The persons I allude to, are Mr. Burke, Mr. Windham, Sir Joseph Banks, Mr. Metcalfe, and Mr. Boswell, who, together with myself, were nominated as Curators of the monument, and who are all extremely indebted to you for your exertions on the present occasion.

Just as I am writing, I am favoured with your second letter, and am very glad to find that you are so soon to be in town; when we can enter more particularly into this business. In the meantime, believe me, dear Sir, with sincere regard and respect, your most humble and obedient servant, EDMOND MALONE.

To Edmond Malone, Esq.

DEAR SIR, *Saturday evening, April 4, 1795.*

I entreat you to accept my best thanks for the frankness and candour of the letter which I this day had the honour of receiving from you; and at the same time I must take the liberty of saying that some of its contents have produced in my mind most unexpected and unpleasant embarrassment.

That the Epitaph which a scholar has prepared for general perusal cannot be wholly unfit to abide the test of private examination seems to be on the one hand no very extravagant presumption. The Curators on the other hand may contend that it is their duty not to let Dr. Johnson's memory be disgraced by an inscription inadequate to Dr. Johnson's merit, that they owe much to his great fame, and to public opinion, and that, in discharging what they owe, they must not yield to probabilities, but insist upon proofs. The weight of this reasoning so far as it is opposed to the mere presumption above stated I readily allow, and I add as readily that the force of it would be very much increased if I had started as a competitor, if I had been employed as a hireling, or if I had come forward officiously and ostentatiously with an offer of my labours. But the situation in which I stand is widely different from any of the cases I have just now supposed, and indeed the circumstances of that situation are so peculiar in themselves as to justify me in throwing off all dastardly reserve, and in supporting what I conceive to be my own rights with a high degree of delicacy, vigilance, and firmness. My services upon this occasion were not obtruded by myself, but solicited by others. At the opening of my correspondence with Sir Joshua Reynolds, I felt reluctance which I did not dissemble, and in the course of it, I did not yield to Sir Joshua's request, till the subject had undergone a discussion so fair and so full as seemed in my opinion to leave no room for the possibility of distrust in the topics I should select, or in the style I should adopt. Resigning to statesmen the unenvied and inglorious privilege of heaping explanation upon explanation, and wrangle upon wrangle, scholars are accustomed to tread in a safer and a surer path of negotiation. With politeness and sagacity, such as I should naturally expect from Mr. Malone, you

suppose "that I should not chuse to submit the Epitaph at all to the inspection of the Curators, unless upon a certain *assurance* of its being adopted." In this passage, dear Sir, you exactly describe the feeling which I have experienced. I could not imagine that Sir Joshua would apply to me without the knowledge and concurrence of Dr. Johnson's other executors, and surely in the very act of that application it was implied, that the person to whom it was made was qualified for the task which he was so earnestly and repeatedly urged to undertake. The Executors filled up the measure of their duty when they chose the writer, when they asked for his services, overcame his reluctance, and assented to his opinions. The approbation given to the man, was, in fact, given to that which the man was able and likely to write, and after such an expression of confidence, I am at a loss to see the necessity, or even the propriety, of those conditions which are virtually prescribed in your letter. The Curators, I must observe, were appointed before Sir Joshua Reynolds wrote to me. I can make no distinction between Curators and Executors so wide as to admit the exercise of a distinct authority. And, most unquestionably, I should not have complied with the request of Sir Joshua, if, in the spirit of that request, I had not fancied a *certain assurance*, that what I granted after much discussion to the one, would, without further discussion, have been accepted by the other.

Be assured, dear Sir, that I have no disposition to speak slightingly of any one Curator whom you have mentioned, and, that I hold the language of sincere and habitual conviction, when I profess for some of them the highest respect that can be due to learning, taste, and genius. It is impossible for me to read the names of Mr. Malone, Mr. Windham, Sir Wm. Scott, and Mr. Burke, without an unfeigned and anxious desire to satisfy their expectations. I have an equal confidence in their judgment, and in their candour. To that judgment, and that candour, I should appeal without hesitation, if, in sending the Epitaph, I were allowed to consider them as private friends, or literary auxiliaries. But the character with which your letter invests them is of another sort, and, therefore, I must suspend my final answer till I have the pleasure of conversing with you next week.

S. Parr.

From Edmond Malone, Esq.

55, *Queen Anne St. East, Monday, April* 13.

DEAR SIR,

I received the inclosed letter from Sir W. Scott this morning, and shall be very happy to learn that you agree to the proposal which he makes, which, appears to me, an extremely reasonable one.

I beg the favour of you to return Sir William's letter, and am, dear Sir, Your most faithful servant,

EDMOND MALONE.

Sir William Scott, to Edmond Malone, Esq.

DEAR SIR, *April* 12, 1795.

I was in hopes that your conversation with Dr. Parr would have removed the difficulty which stood in the way of a reception of his Epitaph. I regret that it has not. As the matter now stands, I can have no objection to obeying your call for my sentiments upon it, more especially as you call upon me in the particular character of Dr. Johnson's surviving Executor.

I was ignorant that Sir J. Reynolds had applied to Dr. Parr in the name of the Executors to write an Epitaph. I presume that Sir John Hawkins was so too, as the communication between him and Sir Joshua was much less than between Sir Joshua and myself. What part Sir John would have taken about it, if he had been informed, I do not know. I should certainly have concurred in it very sincerely, thinking, as I do, that Dr. Parr was a most proper person to be applied to upon the occasion. But I must add that I should have concurred upon it, upon the certain expectation that the Dr. would have been entirely disposed to communicate the inscription to us, before it was fixed upon the marble. Certainly not for the purpose of being subjected to hostile and captious criticism, and still less for that of the writer's receiving from us the law with respect to the style and manner in which it ought to have been written; but merely for the purpose of its being considered by us, in conjunction with him, how far it substantially answered the com-

mon ideas under which we solicited him, and he engaged, to write it. It never would have occurred to me as a departure from that respect which prompted the application to Dr. Parr, for us to have expected that we should have had the opportunity, I will not absolutely say of *approving* the Inscription, for that might be deemed too strong a word, but of giving it the concurrence of our opinion with his. As Executors, we were, perhaps, the persons who were, in the first instance at least, responsible for its general propriety. And I can by no means think it a sufficient discharge of the duties of that responsibility, for us to have conceived our discretion to be limited to the mere choice of a gentleman to write it; and to be absolutely excluded from every thing else relating to it. Dr. Parr will not, I am sure, think that I mean to put either an extravagant or an injurious supposition, when I merely suppose the possibility that in any man's composition, however accurately formed, there may be an expression, or a sentiment, which, to other judgments, equally interested in the same subject, may appear to require a little re-consideration on the part of the writer; or which may at least be the subject of our amicable discussion with him, whether it were not fit that it should be so re-considered, before it is irrevocably fixed. Independently of all this, there is another consideration which weighs powerfully with me. It would have been incumbent upon us to have applied to the Dean and Chapter for leave to put up the Inscription, which, of course, must be submitted to them; for, by undoubted law and practice, the right entirely resides with them of determining what Inscriptions are to be put up within their Church. And I can by no means think that we should have gone to the Dean and Chapter upon a becoming errand, as the bearers of an application in favour of an Inscription which none of us had ever seen, and consequently, could not have had any opportunity of approving.

The committee, chosen, as I recollect, by the majority of the subscribers who appeared at a public meeting, eased the Executors of the business. They were not bound by the choice of the Executors, further than as they adopted it, which they did; and I conceive them to be now standing upon the same footing as the Executors did, with the same claims upon Dr. Parr—the

same responsibility to the public—and the same obligation with respect to the propriety of the application, which they must necessarily make to the Dean and Chapter. Having said this, I must add that, upon one view of the matter, I can by no means think Dr. Parr's present objection to be destitute of reasonable foundation. The Curators are much more numerous than the Executors were. Some of us are strangers to Dr. Parr, and he may fairly enough entertain an apprehension, that the epitaph may possibly be subjected to a freedom of observation, improper to be submitted to on his part. I own I cannot but think that it would be a reasonable accommodation to his feelings, to commit the business of considering the epitaph to any three gentlemen of our number,—any three of them *named by himself*, for the purpose of discussing it with him. This mode promises to secure both objects, the proper independence of Dr. Parr on the one hand, and the fair responsibility of the Curators on the other. I, for one, shall be disposed to act with entire confidence in the concurrent judgments of those gentlemen with Dr. Parr; and I presume that the other Curators will feel the same disposition. It would give me great pleasure to hear, that this suggestion was adopted by Dr. Parr, or was modified by himself in some other form more consistent with his own apprehensions and feelings: so that, at any rate, Dr. Johnson's memory may not be deprived of that honour which the wishes of every friend has been anxious to provide for it. But if this, or something like it, cannot conquer the Doctor's scruples, I fear I must decline joining in an application on behalf of a public inscription, the contents of which have never been seen, and therefore cannot have been adopted by any one gentleman who is to make the application. I am, dear Sir, yours faithfully,

W. Scott.

From Sir William Scott.

MY DEAR SIR, *April* 30, 1795.

Don't think me guilty either of affectation, or of disrespect to you, when I tell you that the term being come in, attended with an uncommon load of business both professional and official, I really am not able to reply to your obliging letters

otherwise than by thanking you for them, and by saying that I have transferred to our common friend Mr. Malone the pleasure of answering them according to his own judgment; in which, having entire confidence, I shall be thoroughly disposed to concur. You will, I am sure, thank me for the choice of correspondent, and I beg you to believe me to be, with real respect, your very humble servant, W. Scott.

From Edmond Malone, Esq.

DEAR SIR, *London, May* 21, 1795.

Some very pressing business of my own has prevented me a long time from obeying Sir William Scott's desire; who, being entirely occupied by the business of the term, requested me to convey to you our joint sentiments on the subject of the two letters with which you favoured us. I may add that I felt myself very unequal to the task, as, indeed, I have nothing more to say respecting the epitaph than that I have said already. However, as in a question of this sort authority may be of some weight in a matter where the appeal must finally be to the public, I may mention to you that, as Dr. Johnson had founded what is called the Literary Club, I thought they had a kind of peculiar interest in any inscription to his memory; and therefore took an opportunity, when there happened to be some of our most eminent members present, to repeat your epitaph; and Mr. Fox, Mr. Windham, Mr. Stevens, Sir W. Scott, as well as all the other members present, were decidedly of opinion, that *probabilis* was an utterly inadequate epithet, as descriptive of Dr. Johnson's character as a poet; and they were equally clear that some eulogium on him as a poet, was absolutely necessary to the *integrity* of his character. I do, therefore, most earnestly request, that you will give us some other epithet; for the total omission is what none of his friends are willing to agree to. Permit me to add one other consideration, which, perhaps, when you turn it in your mind, as I am sure your candour will lead you to do, may have some little weight.

The world, in general, consider Johnson as a great writer, both in prose and verse. Now under the words, "præceptori

recte vivendi gravissimo," his admirable powers as a writer of prose, are not *necessarily* included, though I know they are large enough to comprehend them: but that his g eat excellence in this respect is not *necessarily* included in these s, appears from hence,—that Bp. Butler and Bp. Coneybeare may be both described very truly as "præceptores recte vivendi gravissimi," and yet neither of them was eminent for purity, elegance, or strength of language. If, therefore, no character at all is given of Johnson as a poet, (which I think seems rather to be your wish,) and the other words do not necessarily imply an eulogium on him as a *prose writer*, will not his admirers, which are all the judicious part of mankind, have some reason to consider the inscription, however masterly in every other respect, as an imperfect delineation of him? I may add also, that the universality of his knowledge, the promptness of his mind in producing it on all occasions in conversation, and the vivid eloquence with which he clothed his thoughts, however suddenly called upon, formed in my apprehension (as I formerly took the liberty of mentioning to you), a very distinguished part of the character of his genius, and place him on higher ground than, perhaps, any other quality that can be named. This has been wholly omitted, on grounds, which I by no means wish to controvert; but, at the same time, it surely may be properly urged as a circumstance that entitles us, his ardent admirers, to hope that his character as a *Poet* may not *also* be omitted; and I therefore only mention it as an auxiliary argument to induce you to be a little more *liberal* to us in that part of the inscription concerning which we differ.

Thus, dear Sir, I have, as shortly as I could, though I fear very imperfectly, stated our sentiments on this subject; an amicable discussion of this kind does not stand in need of any apology, and, therefore, I shall not take up your time with making any.

Poor Mr. Boswell died on Tuesday morning, after an illness of five weeks. Just before he fell ill, he had prepared a very civil answer to your letter in the last Gentleman's Magazine.

Believe me, dear Sir, with sincere regard and esteem, your faithful and most obedient servant, EDMOND MALONE.

To E. Malone, Esq.

DEAR SIR,

No discussion conducted by you and myself can be otherwise than amicable in any of its stages, and as we have an equal desire to do justice to the memory of Johnson, we ought, I am sure, with equal good-humour to insist upon our respective rights of investigating the manner in which that justice is to be done most effectually. From the beginning I have entered my firm protest against all minute discrimination, all rhetorical phraseology, and all exaggerated praise. Indeed, were I reduced to the alternative of saying too little or too much, my choice would be on the side of defect rather than excess. I would not lavish upon an uncommon man, the trite, pompous panegyric which is every day bestowed, with little propriety and little effect, by common writers upon common characters. Having made a reader assent to what I state, I would at once lead and leave him to supply what I have omitted. I would calmly awaken his sympathy rather than force it rudely, and after preserving the simplicity and the purity of truth, I should disclaim those artifices which are usually employed to produce dignity from littleness, and splendour from embellishment:—such are the rules I would prescribe to myself in writing a Latin epitaph for a Christian church. There may have been occasions upon which men of letters have been pleased to say that my Latin style is not very deficient in copiousness, in energy, and perhaps now and then in elegance; but I look upon an epitaph as a composition *sui generis*, and my taste, gendered as it is by my observation of the uniform practice of antiquity in matters of this kind, places me above the reach of those allurements which vanity might hold out to a writer less acquainted than myself with the best models that have come down to us in Latin inscriptions.

Where I have not the good fortune to agree with you upon any point of criticism, I hope ever to have so much good sense as neither to disregard your arguments, nor to slight your authority. You cannot value more highly than I do the extent of Johnson's knowledge, the readiness of his mind in producing it, and the vivid eloquence with which he clothed his thoughts.

[illegible] were not [illegible] by him in any public [illegible], as a [illegible], or as a professor, or as a religious instructor, or as a parliamentary speaker, then doubtless their [illegible] with the two important circumstances: [illegible] their lasting use, would have [illegible] upon his monument. [illegible] in private conversation, they are [illegible] for biography than for an inscription, [illegible] I have now to add, would be compelled to [illegible] which an epitaph writer would be justified in omitting. [illegible] anticipated my confession, by supposing that I [illegible] in contradiction, to his [illegible], in misrepresentation, in [illegible] of memory, together with the cavils, [illegible] in which he used to seize it, upon all occasions, from all antagonists. These peculiarities, these infirmities, for I cannot but give them a harsher name, were, among his contemporaries, almost equally famous with the excellences which accompanied them. They are associated, I am sure, in the memory of all to whom Johnson was known. They mostly enter into the conversation of those to whom he was unknown, and I fairly own to you, that, thinking myself authorized to speak the truth, I should have found some difficulty in commending, and some reluctance to attempt extenuation, upon topics whose it is more decorous for a Christian teacher writing for a Christian church, to be wholly silent.

You tell me, dear Sir, that when I call Johnson praeceptorem nostrum omnibus gravissimum, the expression does not necessarily imply that he was a prose writer. Very true; but it does imply that he was a moralist in his writings, and, as morality is a distinguishing feature of those writings, I have said what will be easily understood and readily acknowledged by all who have read them. You say, further, that Bishop Butler and Bishop Conybeare may deserve the same praise in the same terms. This also may be very true. But it is not true that they were grammarians and critics like Johnson, and therefore Johnson, whom I have described as a grammarian and a critic, is so far superior to Conybeare and Butler. Human language, however [illegible] it may be for the representation of intellectual qua-

lities, is very scanty indeed in supplying determinate expressions for the proportion of their quantity. What is said of one man in one respect, may with equal truth be said of some other man. Johnson was eminently, but not exclusively, a great teacher of morals, and a great master of style. But it is the province of a critic, not of an epitaph-writer, to descend from strong generalities to pointed distinctions. The conciseness, the simplicity, and the solemnity which are indispensibly necessary to a Latin epitaph, and peculiarly characteristic of it, leave no room, as I have again and again maintained, for the ornaments which are so profusely scattered by modern writers. Amplification would here disgust, and enumeration would fatigue.

The objections, and even the scruples, of our friend Mr. Fox, upon a point of taste, will always make me pause. So far, however, as the two questions in dispute between us depend upon authority, my judgment is divided between contrary evidence, which I have no hesitation in pronouncing to be of equal weight. The responsibility I am to incur is a most fearful one, and I have all along proceeded with a deep and anxious sense both of my duty and of my danger. I can make no surrender of my own opinion to one set of men, without incurring some degree of disapprobation from another set of men, whom I am, and whom I ought to be, equally solicitous to please. My situation, therefore, imposes upon me the unwelcome necessity of consulting my own judgment, and it happens very unfortunately, that, at every appeal I have made to that judgment, I find the result to be at variance with your opinion. How then shall I proceed?

My wishes,—yes, good Sir, my most sincere and earnest wishes, would lead me to many sacrifices for the comfortable and honourable purpose of satisfying yourself and the very respectable persons whom you mention; but you must forgive me for reminding you that some members of the Literary Club may not be wholly exempt from the partialities of private friends, and the enthusiasm of literary partizans. I blame not those partialities nor that enthusiasm; I blame them not in their excesses; but from their weakness I ought to be entirely free, when I am expressing my own sober and solid judgment, when I am committing it to a hallowed place, when I am recording it for the

perusal of hostile as well as friendly contemporaries, of foreign intelligent and inquisitive scholars, of generations yet unborn, of readers qui sine odio et sine amore judicabunt. With such a host arrayed before the imagination, prejudice stands mute, the pride of exertion is humbled and dismayed, and even the consciousness of right intention is hardly able to sustain the human conflict amidst the unceasing agitation of hope and fear. Often have I wished that the office had been undertaken by those whose prepossessions in Johnson's favour I suspect to be somewhat stronger than my own, and whose opinions about the structure of an epitaph I know to be widely different from those which I entertain. In truth, when the request was first made to me, I took the liberty of pointing out Sir William Scott and Bishop Horsley as the proper persons to write the inscription; and by myself most assuredly it would never have been written at all, if I had foreseen what has lately happened. How to go on I at this moment know not. On Friday last I received your letter: on the next morning I altered the passage with which you were dissatisfied, and as the alteration will in all probability be more pleasing to you than it is to myself, I am at this instant determined to communicate it; but I am conscious of no petty captiousness, no churlish perverseness, no literary haughtiness, when I tell you—first, that I persist in thinking it better to omit than to notice the poetical character of Johnson, and secondly, that the manner in which it has been already noticed, is preferable to that which I shall presently suggest. You must excuse me, dear Sir, for believing that you and others listen to the word probabilis with an English ear, and you will not be angry with me for confiding so far in your sagacity as well as your candour, as to presume that, after the perusal of the paper which accompanies this letter, you will form a more just, and I add a more favourable, opinion of its import. I chose that word after much deliberation. I shall defend it when chosen, with unremitted firmness and even jealousy. I have never reflected upon it without a complete conviction of its propriety, and even with a triumphant feeling of its felicity. You and others, whom in common with yourself I am accustomed to esteem, think differently. It remains for me to respect their opinion without abandoning my own.

Now I will tell you of the alteration; — Poetæ sententiarum et verborum ponderibus admirabili.

These words are energetic, sonorous, and in point of Latinity unexceptionable. They express my real opinion, they comprehend, I suppose, or nearly comprehend yours. But with all these advantages, they fill one with a secret and invincible loathing; because they tend to introduce into the Epitaph a character of magnificence, which I have been most anxious to avoid. I cannot, for the present, prevail upon myself to say that they shall be used. But if, in the course of a few days, my scruples shall completely give way to your wishes, I will get our parish clerk to write them in his best manner; and at the same time I shall, for the sake of relieving the rhythm introduce another alteration. Instead of scriptori recte vivendi gravissimo, which will then load the ear, I shall shorten but not weaken the epitaph by saying, magistro virtutis gravissimo.

Of Johnson's poetry, I, in the original inscription, had not taken any notice; and before the inauspicious moment in which I did notice it, the line ran,—Magistro veræ virtutis, which is plain and dignified; but, as epithets are used in all the other parts, I must, for the sake of regularity, affix one to magistro.

S. Parr.

To the Right Hon. C. J. Fox.

DEAR SIR, *May* 23, 1795.

As our good friend Mr. Malone tells me that you object to the word probabilis as describing imperfectly what you conceive to be the merits of Johnson's poetical character, I must desire you, when you have a little leisure from greater things, to cast your eye over the inclosed paper. On subjects of taste, as well as politics, your authority is, indeed, most weighty with me; and therefore I cannot slight any objection, to which you have for a moment given your assent. But you will excuse me for saying, that opinions given even by able men, in mixed company, and suddenly, may not always be exact on topics of Latin criticism; and I am a little inclined to suspect, that you listened to the word rather with an English ear, and that you will form a more clear and favourable opinion of its import, when you

have read what I herewith send for your perusal. I chose the word after much deliberation, and I never reflected upon it without an entire affiance in its propriety; and, I will venture to add, almost a triumphant feeling in its felicity.

From the beginning of the business I was unwilling to write Dr. Johnson's Epitaph, because I knew that his friends had the enthusiasm of literary sectaries; and because I had reasons for supposing that some of them, however distinguished by their taste and knowledge in modern languages, were not very deeply skilled in subjects, which it became an epitaph writer to understand thoroughly. I hinted my scruples, delicately enough, but intelligibly, to Sir Joshua Reynolds; and with great earnestness I proclaimed my rooted disapprobation of the *pompous* and *aculeated* styles which I had seen in almost all the modern inscriptions that are found in our cathedrals and our universities. I know when the lapidary style began, and how it was disseminated; and from my frequent perusal of the very best inscriptions which are come down to us from antiquity, I further know where *alone* such models were to be found as it became me to imitate. With you I will use no disguise, and to you I can give no offence, by saying, that Johnson did not follow those models, because he was not acquainted with them. I will not enter into the objections which have been made to particular expressions in the epitaphs which Johnson wrote; but I contend that their whole character is not what it ought to be, though I admit that they have many excellencies. I begin with protesting against all minute discrimination, all rhetorical embellishment, and all exaggerated praise. The indispensible and characteristic excellence of a Latin epitaph is that ἀφέλεια which neither you nor I can translate; but which we both of us understand, and feel, and approve, and love. I conceived that after my correspondence with Sir Joshua, and after the express permission he gave me to go my own way, I should not be drawn into any controversy, with any other persons whatsoever. My responsibility, dear Sir, is indeed a fearful one; and I wrote under a full and serious impression both of my duty and my danger. For reasons, which will instantaneously occur to your sagacity, I wrote what I had to say upon a scholar, with a view to the approbation of real scholars; and though a variety

of circumstances made it necessary for me to pay *some* regard to popular judgment, even here I passed by those contemporaries whose love and whose hatred of Johnson were excessive; and I made my appeal to the sympathy of those who are now unborn; and who "sine odio et sine amore judicabunt."

I persist in my opinion, that Johnson's poetical character might without injustice, and without impropriety, have been wholly omitted in his epitaph; and so far as authority can go, I find that the judgment of those who wish me to be silent about it, is in point of respectability, not inferior to the judgment of those who would have it noticed. Be assured that it had no place whatsoever in the original inscription; that I admitted it, *purely and solely*, from the deference I felt to the wishes of Dr. Johnson's personal friends. Having made this concession, I must firmly assert my own right in the ultimate choice of expressions for which my own character will be answerable, when all prejudices in favour of Johnson, and against him, shall have past away; when all disputes between his Curators and myself will be forgotten; and when his writings will be the only measure for the decision of impartial and learned men upon the merit of his epitaph. I have the honour to be, dear Sir, with the greatest respect, your most sincere well-wisher and obedient faithful servant, S. Parr.

I cannot help being anxious about your tried judgment on the word *probabilis*, and, therefore, when you have time to write half a dozen lines, pray favour me with it. I have not quite made up my mind about recalling the epitaph. But I am much disposed to recall it; and even if I should fix upon some other word, my preference will be to probabilis. You will say, and I shall agree with you in saying, that what is written upon an epitaph should be clear as well as accurate; granted,—but clear to whom? To scholars, surely. Or why is the inscription upon an English writer not itself written in the English language, for English readers? If I am employed as a scholar to write in Latin, I must use the best words which the Latin language supplies for my meaning; and if that meaning, so conveyed, leaves some difference of opinion between Johnson's friends and myself on the score of justice to him, there is but one remedy,

and to that remedy I must in all probability have recourse from motives of justice to myself.

What say you to this,—

Poetæ sententiarum et verborum ponderibus admirabili.

It is just, it is sonorous, and yet I have written it, ἑκὼν ἀέκοντί γε θυμῷ.

To E. Malone, Esq.

Ἔρις περαίνει μῦθον ὑστάτη θεῶν. These, dear Sir, are the words of a writer of whom, as compared with your Deus in dramatic writing, William Shakspeare, I have often said, what Quintilian with equal wisdom and felicity says of Virgil compared with Homer, that he is second indeed, but ita secundus, ut primo sit propior, quam tertio. If Dr. Joe Warton were at your elbow, he would be complaining that Æschylus has confounded a little the mythological and the physical properties of contention, and I should produce twenty instances from the best classical writers who have done the same. But, criticism apart, I mean to say that, as we dispute to little purpose, it is high time for me receptui canere. I wish, indeed, on this and every other occasion, to retreat like Ajax, ἐντροπαλιζόμενος. But, after the concessions I have made to your wishes, I think that you will allow me in discussing matters with such men as yourself and Sir W. Scott not to be μάχης ἀκόρητον. My judgment in favour of *probabilis* is unmoved, and, I believe, immoveable. But, as I cannot persuade you and some other valuable men to think with me, I have altered the passage finally; and, so far as good Latin or just description may be concerned, I have altered it satisfactorily to myself. Here it stands,—

Poetæ luminibus sententiarum
et ponderibus verborum admirabili.

This I hope is honeyed enough for your taste, and solid enough for your appetite. Sir W. Scott was scared at the possible objections of Reverend and Right Reverend hypercritics. Well, as I am in a yielding humour, I will pay some attention to the squeamishness of weak brethren. As they may think, or fear lest others should think, that there is some lurking taint of Heathenism in αὐτῶν ἐκ μακάρων, and as they may

not suppose the expression sufficiently purified by Johnson's crucible, I altered the first part by substituting ἐν μακάρεσσι πόνων. And now, dear Sir, they must allow that μακάρεσσι is a very sound orthodox word for the blessed in Heaven, among whom Johnson is represented as wishing for the merited reward of his labours.

Since you have obligingly taken so much trouble about the contents of the inscription, I must beg the favour of you to take a great deal more in having it well executed as to the form and position of the words, letters, stops, &c. For my part I have but little confidence either in the statuaries, or the auxiliaries of statuaries, where Greek and Latin are concerned. But, I am myself a very fastidious and a very anxious man upon these matters, and I feel my credit interested in having a Latin epitaph engraved according to due classical form. Besides, we have known a Greek line, and Greek words, were sometimes formidable, even to Greek engravers. Monsieur Le Roy has made a pleasant mistake by following Wheler and Spon, who followed the engraver, who did *not* follow the writer. In a Greek inscription found in a temple at Athens, Le Roy prints Αθηναι ἀρχηγέται, and, like a true Frenchman under the old government, he supposes the words to mean the Athenian *Noblesse*, who had dedicated the inscription to Augustus. Alas, the Athenians were pure democrats when this inscription was made, and the Frenchman's blunder arose from the original mistake of the engraver, who, in the penultimate letter, put an alpha for a delta. If my unrelenting detestation of the present war, in its principles, conduct, &c., should ever bring me to the Old Bailey to be tried for high treason, I beg of you not to produce this letter as a proof of my aversion to aristocracy; for, before such a judge as Baron Eyre, I should plead in vain that I told the tale as a warning, and that this warning was given out of my zeal for having all things done well for the memory of Dr. Johnson, who, if living, would have been the prince of aristocrats. To speak seriously,—engravers must be watched. Scriptori rectè vivendi gravissimo, I have altered into,—Magistro virtutis gravissimo, for the purpose, as I told you, of shortening and lightening the inscription. In all these things I give way ἑκὼν ἀεκοντί γε θυμῷ. And must I blush for having done what even

the νεφελεγερέτα Ζεὺς is represented as doing in old Homer? You will expunge probabili poetæ, and præceptori rectè vivendi gravissimo, and bid the engraver follow the paper which you will receive on the same day this comes to you. I have enclosed it to our friend Mr. Courtenay. I am, dear Sir, your very respectful, obedient servant, S. PARR.

To Dr. Parr.

MY DEAR SIR, *June* 2, 1795.

I am still, as I at first was, an advocate for *probabilis*, nor do I much fancy the *luminibus et ponderibus*. The Literary Club may decide as they choose; but Ernesti explains the word, *qui placet, probatur*, which might satisfy even daintier ears. I told you that a commentary would be necessary.

But you have never favoured me with a copy of the whole. Pray let me have it ὅπως τάχιστα.

At Sir William Scott I am surprised. As to dilettanti scholars, they seldom have my wonder. I met Seward a few days ago, and gave my most decided opinion in favour of *probabilis*, which had staggered him.

The purpose of writing, to be sure, is to be understood; but a Latin inscription in St. Paul's is not meant to be addressed to every day readers. I stick to *probabilis*; but pray let me see the whole.

As you have a Placcius in view, whenever a book in return for Priscian strikes you, let me hear, and I will thankfully make good my moiety of the exchange. Adieu, my dear Sir,

Ever affectionately and truly yours, C. BURNEY.

P. S. I write in great haste.

DEAR SIR, *London, July* 13, 1795.

I did not trouble you with a letter merely to say that Sir William Scott and I were much pleased with your alteration of the epitaph, and neither of us thought the new words at all *too honied:* the Greek line is most happily changed, and may set all cavil at defiance.

The inscription has been in Mr. Bacon's hands these some weeks past, and I did not think you would have had any more trouble with it: but in that part which relates particularly to himself, he wishes not to be shorn of his academical honours, and that posterity should know that he was entitled to annex R. A. to his name. You will be so good, therefore, as to Latinize this for him, and to say how it shall stand. The words are at present,—Faciebat · Iohannes · Bacon · Sculptor · Ann · Christ · M.DCC.LXXXXV.

In your directions you say the form of the letters is to be implicitly followed; by which I conceive was only meant, that where V was written instead of U, the sculptor should attend to his archetype: not that the common letters, where, from the unskilfulness of the penman they are not *truly formed*, should be followed in this respect. Several of the letters are illegitimate in shape, and therefore I have directed him to follow the instructions implicitly, except in the irregularity of the letters, where they are irregular. I take it for granted you would wish them to be made after Caslon's best specimens of printed capitals, of the size you have adopted.

I am, dear Sir, with sincere regard, your most faithful and obedient servant, EDMOND MALONE.

DEAR SIR, *London, July* 23, 1795.

I have called on Mr. Bacon, and he very reluctantly has agreed to omit any notice of his being a Royal Academician. With respect to the inscription, your copy has been rigidly followed, AE's, V's, and all. Be not at all alarmed at what I said about legitimate letters. An instance will at once explain what I mean. If it be a rule in the printed letter, A for example, that the first stroke should be of a certain thinness, and the second of a certain thickness, you would surely wish the letter should be made according to the best pattern. It has been so made; and so of the rest: that is the whole.

I am this moment going to the country, and can only add that I am, dear Sir, your very faithful and obedient servant,

EDMOND MALONE.

To E. Malone, Esq.

DEAR SIR,

I have this day done myself the pleasure of writing my final opinion to Sir W. Scott, and though I am well aware that he will shew you the letter, I should think myself deficient in that respect which is due to you from every scholar, and which my judgment and my feelings will ever induce me to pay to Mr. Malone, if I were not to tell you that the contents of that letter are equally intended for your own perusal and Sir William's. I have again and again looked out for some adjunct to supply the place of *probabilis*, and my efforts have not been successful enough to satisfy my own taste. The plain truth is, that the whole passage about Johnson's poetry should be omitted. I do not presume to determine how far we are agreed upon the fundamental principles and the characteristic properties of a Latin Epitaph. But I know very well the defects of many popular compositions in that way, and I also know that the respect which is due to Johnson, and the solicitude I must feel for myself, have made me very diligent and wary in chusing both the style and the topics. I have the satisfaction of finding that several of my learned friends concur in opinion with me, and if I have not the good fortune of hearing that the very learned Curators finally agree with me, surely, dear Sir, we shall neither give nor take offence by having the office transferred to some other person. I have the honour to be, with great respect, your very faithful well-wisher, and obedient servant, S. PARR.

To Sir W. Scott.

DEAR SIR,

With sentiments of the greatest and most sincere respect for yourself and Mr. Malone, I have carefully revolved the passage on which we had not the good fortune to come to any final agreement, when I had the honour of conversing with you lately in London. Be assured, Sir, that I am disposed to make very large concessions indeed to your wishes as Dr. Johnson's Curators, and to your authority as men of letters. But my mind is

filled with uneasy apprehensions, when I reflect on the close and lasting responsibility which I am myself to incur, not merely to those who knew and who loved Dr. Johnson, but to those who from accident knew him not, to those who from prejudice loved him not, and to posterity, who will decide upon his moral and literary merits with calmness and impartiality. That the epitaph was written by such or such a man, will, from the publicity of the situation, and the popularity of the subject, be long remembered. That the curators, in opposition to that man, contended for the introduction of such or such a topic, in such or such a form, may be soon forgotten. The approbation you give to that form, and the reasons I allege against it are circumstances, which not appearing upon the monument, can, in our own days be known only to few; while, for the words which do appear, and are known to all, the writer must be ultimately, and almost exclusively responsible. Surely, then, if you admit what is well founded in point of fact, and if you exclude what is improper in style or in sentiment, you fill up the measure of your duty as curators. Far be it from me to enter into any formal contest with you or Mr. Malone, upon the degree of Dr. Johnson's excellence as a poet. The difference between us is, I suspect, rather nominal than real, and were I to undertake the office of a Biographer to Dr. Johnson I should probably speak of his verses with no less ardour of commendation than you feel. But, upon the mention of his poetical character in an epitaph I have serious doubts, because his poetical writings, however excellent, are few. Not choosing, however, to confide in my own opinion upon a matter of such delicacy, I have consulted some literary friends whose reluctance seems stronger even than my own is, and whose names, if they were communicated to you and Mr. Malone, would not appear wholly unworthy of attention. Let me specify among others, or rather let me select from them, the venerable President of Magdalen College. And where is the critic to whom Johnson can be more dear than he is to Dr. Routh, as a man of learning, a man of genius, a fine writer, a profound moralist, a Loyalist in his politics, and a distinguished champion of orthodoxy in his faith?

The President had written to me, while I was absent from Hatton, with his usual acuteness, and when I called upon him

at Oxford in returning hither, he, with more than his usual earnestness, entreated me to omit the words in question. The same opinion was given, and the same request was made to me on the day before I saw you, by another person, who in erudition, indeed, is somewhat inferior to yourself and Dr. Routh, but who, in penetration and taste, will recognize no more than an equal in any scholar of the present age.

Again and again I have balanced the weight of the matter contained in the different sentences, and to my ear, disciplined as it is by the perusal of the best ancient inscriptions, I have again and again appealed for the proportion of the rhythm. The result is, that the epitaph must be injured by any mention whatsoever of Dr. Johnson as a poet. And as to the particular manner in which he is now mentioned, I think with you that unlearned readers will mistake my meaning, while several of my learned friends think with me, that it could not have been expressed with greater precision.

On considering and re-considering what passed between us, I must now anxiously beg your permission to have the disputed passage entirely expunged; and if you and Mr. Malone should not be pleased to comply with this request, I must take the liberty of respectfully withdrawing the whole of what I have written; because I am convinced that the effect of the whole will be marred by the continuance of a part which, to Mr. Malone, appears very cold, to you somewhat equivocal, to myself inharmonious, though not inaccurate; and to others, as well as myself, superfluous, though not unjust.

As to the word *μακάρων*, it must stand, I believe, on no other foundation than the circumstance of having been used, and I think consecrated by that use, at the close of the Rambler. Dionysius, though he lived soon after the commencement of the Christian Æra, cannot be considered as a Christian writer. But who will think of Dionysius at all, or who will not be content with thinking of Dr. Johnson only? It is seldom possible for human art, working upon human materials, to be at all points prepared against the scruples of the weak, and the cavils of the captious. But, in my opinion, the general solemnity of the sentence more than expiates the particular form of the phraseology. It cannot, I think, be *inconsistent* with good taste to re-

present Johnson as saying on the scroll, what, in truth, he has deliberately and emphatically said in the Rambler. It cannot be offensive to good morals for me to place in a Christian church those words which Johnson has placed at the conclusion of a work in which the noblest truths of Christianity are ably defended, and its soundest precepts are powerfully inculcated. Homer, it is true, uses *μάκαρες Θεοὶ*; and *μάκαρες* without *Θεοὶ* also is applied by heathen poets to their Deities. Yet *μακάριος Θεὸς* is used in the Epistle to Timothy; and I find the same word often written by the ancient Fathers when they speak of the Supreme Being. It is also applied by them to good men, and yet who will say that the blessedness of God and of Man is the same? *Μάκαρ* is applied by Gregory Nazianzen to Christ, *ἐκ σέθεν εἰς σὲ μάκαρ λεύσσω*. In the verses subjoined to his discourse *τῇ δευτέρᾳ μετὰ τὸ πάσχα*, and in the next poem, called *παρθενίης ἔπος*, he uses *μάκαρ* of blessed spirits.

ὅσον βιότοιο ῥέοντος
ἑστηκὼς μακάρεσσιν.

The objection, if any be made, will be pointed against the plural as polytheistic, and for the plural I tell you fairly that I find no direct authority in writers professedly Christian. I must therefore have recourse to the circumstance which solely and peculiarly gives propriety to the line. As an epitaph writer I could not, perhaps, in my own person be justified in putting such a line upon the inscription itself. But the scroll is a distinct consideration, and upon the scroll, Johnson, as I have already observed, may not improperly be described as saying what he had before said in a book. I believe that the Dean and Chapter will not be scrupulous, and if they are we must have recourse to the line which I intended to use before I heard of Mr. Seward's judicious suggestion. It contains a favourite maxim of Johnson's; it describes very well the moral character of his works, and though written by a Heathen has no marked features of heathenish phraseology. I persist, however, in giving upon the whole the preference to the verse from Dionysius.

In regard to Mr. Bacon we may venture I think in retaining the word Sculptor, though I find in Cœlius Rhodiginus lib. 29. cap. 24. that the art of Statuary is divided into five sorts, among which, that which relates to marble and stones is called *κολαπ-*

τικὴ, and that which belongs to metals is styled γλυφικὴ. In Cap. 4. lib. 36. of Pliny, we read, "Jam fuerat in Chio insula Malas *Sculptor:* dein. filius ejus Micciades, &c.;"—again, "Ab oriente cœlavit Scopas." We must, by all means, let Mr. Bacon find a corner for his name, for you and I are no strangers to the revenge which artists have taken when this favour has been refused to them. I do not suspect Bacon of intending to imitate Phidias, who, when the Athenians would not let him put his name on the Statue of Minerva, made a better statue of Jupiter for the Eleans. But there is something in Bacon's name which sounds to me ominous, and recals to my memory the trick which Saurus and Batrachus played, when Octavia would not give them leave to set their names on the Temples they had built in Rome.

In allusion to their respective names, one of them scattered σαῦραι, and the other βάτραχοι on the bases and capitals of the columns. The Curators then, I think, would be mortified if Bacon were slily to put the figure of a hog on Johnson's monument, after not being allowed expressly to perpetuate his name as the artist.

I beg the favour of you to present my best compliments to Mr. Malone, and I have the honour to be, with great respect, dear Sir, your most obedient, faithful servant,

S. Parr.

P. S. As my paper is not full I will venture to insert two lines, which I long ago read and marked in the Anecdota Græca, by Muratorius, and which may be acceptable to our friend Mr. Malone, as descriptive of Johnson's benevolence, of his ready powers in conversation, and of the instruction it conveyed to his hearers.

Ὦ μάκαρ, ὦ ξυνὸν πενίης ἄκος, ὦ πτερόεντες
Μῦθοι, καὶ πηγὴ πᾶσιν ἀρνομένη,
Ἄσθματι πάντα λίπες πυμάτῳ.

These lines were written by Gregory Nazienzen upon Amphilochius, and however untractable they may be in the hands of an epitaph writer, they might be managed with success by such a biographer as Johnson deserves, and perhaps has hitherto not had.

To Dr. Parr.

DEAR SIR,

My friend Shaw is gone to London with the commission you charged me with. I write to tell you I do not like the Epitaph half so well in its altered as in its original state. You are more secure, perhaps, from the attacks of critics like yourself, as to particular expressions; but, unless I am greatly deceived, much of its former simplicity and energy is departed. I think it my duty to write to you thus honestly on a subject of some importance, and remain, dear Sir, your sincere friend,

M. J. ROUTH.

Secure the former Epitaph against all attack, but preserve its form and essence. If this cannot be done, you had better dismiss it from your mind and write another.

DEAR NED,

Now I will send you Dr. Johnson's Inscription in its several stages. First, it stood thus:

Samueli Johnson,
Grammatico Anglicano,
magistro veræ virtutis,
homini optimo et singularis exempli,
qui vixit Ann. LXXV. Mens. II. Dieb. XIV.
Decessit Idib. Decembr. Anni Christ. MDCCLXXXIV.
Sepult. in Æd. Sanct. Petr. Westmonasteriens.
XIII. Kal. Januar. Ann. Christ. MDCCLXXXV.
Amici Sodalesque Litterarii
pecunia conlata
H. M. faciund. curaver.

Now, Ned, from *Gallia* is formed *Gallicanus*, a word of most unexceptionable authority, as well as *Gallicus*. Classical writers, however, do not use *Anglicanus*, and there are objections to it, though it is found as well as *Anglicus*. Among my very *learned* codgers, a distinction is made between Grammarians and Critics; for the latter particularly takes in the Biography of Poets. So I altered thus,—

Samueli Johnson,
Grammatico et Critico
Scriptorum Anglicorum litterate perito.

You see I meant to confine his characteristic erudition to writers in the vernacular; and more just, appropriate terms cannot be found.

Then it occurred to me, that of his poetry some notice should be taken. Like an owl I took it,—but I took it *meo more et modo*, i. e. in conformity to the rule I had laid down for avoiding all rhetorical phraseology, and all exaggerated praise. I therefore said, *Probabili Poëtæ*. In arms were all the Johnsonians: Malone, Stephens,* Sir W. Scott, Windham, and even Fox, all in arms. The epithet was cold. They do not understand it, and I am a Scholar, not a Belles-Lettres-man; an epitaph writer, not a panegyrist; a critic, not a partisan. However, to shew that I have many arrows in my quiver,† this I have altered thus,—and it is well done, boy.

Poëtæ luminibus sententiarum
et ponderibus verborum admirabili.

You see he was not a poet in the high class of imagination. Had I praised Johnson as you would praise Pindar, it would have delighted the Johnsonian school.

Well, Ned, having some secret though faint doubts about *Magister*, as applied to one who had founded no sect, and headed no disciples, and framed no system, I altered Magistro veræ Virtutis, into

Præceptori recte vivendi gravissimo.

But as Poetæ luminibus, &c. is a long, ponderous member, I have returned to *Magistro*, and written thus forcibly;

Magistro virtutis gravissimo.

The whole then is,

Samueli Johnson,
Grammatico et Critico
Scriptorum Anglicorum litterate perito,

---

* He means of course, Steevens. It is not a little singular, that, with his marvellous and minute accuracy in so many other points, Dr. Parr continually mis-spelt proper names.

† An allusion to Pindar, Olymp. ii, 150.

Poëtæ luminibus sententiarum
et ponderibus verborum admirabili,
Magistro virtutis gravissimo,
Homini optimo et singularis exempli, &c.

Now for the close. Master Ned, *que* couples closer than *et*; and *ac* more loosely than either. Thus,—Senatus populusque Romanus. You see Romanus applies ἀπὸ κοινοῦ to both. So I have put,—Amici *et* Sodales litterarii, &c.

The execution in form of letters and pointing, &c. is done according to the best models, Ned. I am confoundedly out of humour, and so you may tell Dr. Pretyman.

I wished to be short, and to preserve the ἀφέλεια; these fine go folks *in alia omnia*.

After I had written the Epitaph, Sir Joshua Reynolds told me there was a Scroll. I was in a rage. A Scroll! Why, Ned, this is vile modern contrivance. I wanted one train of Ideas. What could I do with the Scroll? Johnson held it, and Johnson must speak in it. I thought of this, his favourite maxim, in the Life of Milton,

Ὅτι τοὶ ἐν μεγάροισι κακόν τ' ἀγαθόν τε τέτυκται·

In Homer* you know,—and shewing the excellence of Moral Philosophy. There Johnson and Socrates agree.

Mr. Seward hearing of my difficulty, and no scholar, suggested the closing line in the Rambler; and had I looked there, I should have anticipated the suggestion. It is the closing line in Dionysius's Periegesis, mind.

Αὐτῶν ἐκ μακάρων ἀντάξιος εἴη ἀμοιβή.

This you see is religious, and better for a church. I adopted it, and gave Seward the praise. Oh! quoth Sir W. Scott, μακάρων is Heathenish, and the Dean and Chapter will hesitate. The more fools they, said I. But to prevent disputes I have altered it.

Ἐν μακάρεσσι πόνων ἀντάξιος εἴη ἀμοιβή.

And so much for their Rev. and Rt. Rev. scruples. Ned, I will cut your throat, or have you downright guillotined, if you say one word to any lady till you hear from me. To be serious, I shall be angry if you say a word. 'Tis a good Epitaph after

* Odyss. δ. 392.

all. I 'll send you Smitheman's, in a much better taste, Ned; for there I had my own way, and none of these *litteratores* and *Grammaticastri* to deal with. Oh! Ned, it is charming, and melts my very soul when I stand by it at the Communion Table. Farewell. My compliments and good wishes to Mrs. M.

Your's truly, S. PARR.

Master Ned, I could write three pages on *probabili*, as a Latin word to be approved by Latin ears and a Latin scull. But these Englishists ————

PAGE 569.—At Long Whatton, Leicestershire, to a pupil.

PAGE 571.—Aston Church, near Birmingham.

PAGE 573.—Oswestry, Salop.

PAGE 575.—Geneva.

PAGE 576.—Hatton Chancel.

PAGE 577.—Choulesbury, Bucks.

PAGE 579.—Kensington.

PAGE 581.—Budbroke, Warwickshire.

PAGE 582.—In the Chapel of Emanuel Coll. Cambridge.

PAGE 583.—St. Clement Danes, London.

PAGE 584.—After the line CONIVGI. B. M. the Christian name of the lady of Mr. Barretti being unknown to Dr. Parr, was omitted. A space was left for it in the original, which should have been also marked in the printed copy.

PAGE 585.—"The poets often, and sometimes the prose writers, use parentum: but I prefer parentium. Horace says,

Dos est magna parentium
Virtus.

The grammarian Charisius says that Cicero generally wrote *parentium*. Again, *parentium* is found in many inscriptions, and the learned Fabretti defends and illustrates this genitive plural as more adapted to inscriptions than parentum." S. PARR.

PAGE 587.—A draft of an inscription to Dr. Warton; the approved one, in Winchester Cathedral, follows in page 588.

PAGE 589.—Archdeacon Wrangham did not make use of this inscription, but adopted one written by himself.

PAGE 590.—Worcester Cathedral.

PAGE 591.—Rotten Park, near Birmingham.

PAGE 592.—For Beauchamps Chapel; and the following for the statue of Guy, at Guy's Cliff near Warwick, the seat of the late Bertie Greatheed, Esq.

PAGE 594.—On a piece of plate presented by Thomas William Coke, Esq. of Holkham.

PAGE 595.—These windows adorn the cathedral of Lichfield, and the inscription is in the east window of the south aisle.

PAGE 596.—On a piece of plate presented by T. W. Coke, Esq.

PAGE 597.—Colchester.

PAGE 598.—In the garden of Ealing Rectory, Hants.

PAGE 599.—Wotton, Warwickshire.

PAGE 600.—Intended for a monument to Mr. Pitt.

PAGE 602.—Intended for the statue of that minister in the senate house of Cambridge.

PAGE 603.—Warrington, Cheshire. l. 8. for PRECIPITI read PRAECIPITI.

PAGE 604.—At Manchester.

PAGE 605.—l. 4. for A SACRIS read A SECRETIS.

PAGE 606.—Inscribed on the Temple of Liberty erected in the grounds of Woburn Abbey by the late Duke of Bedford.

PAGE 607.—This inscription in honour of Mr. Fox is incomplete, wanting dates with which Dr. Parr was not furnished.

PAGE 610.—"Mr. Chamberlayne was eager to have a Latin inscription. He liked that which I sent to him, and he never put it up. S. PARR."

PAGE 611.—Overbury, Gloucestershire.

PAGE 612.—The Charter House.

PAGE 613.—On a mural monument at Eartham, a village about two miles from Norwich. l. 6 from bottom, for SCIENTIA read SCIENTER. l. 5 from bottom, for EFFECTUS read AFFECTUS.

PAGE 616.—At Corunna, Spain.

PAGE 619.—On a salver at Worcester College, Oxford.

PAGE 621.—In the chapel of Caius Coll. Cambridge.

PAGE 623.—These inscriptions to Mr. Barker are on fly-leaves of M. Nizolius Lexicon Ciceronianum, Patavi, 1734.

And in Th. Reinesius Epistolæ ad Ch. Daumium, Jenæ, 1670, 4to.

PAGE 625.—For Merton College, Oxford.

PAGE 626.—For a painted window at Merton College.

PAGE 627.—In Grabe's Spicilegium SS. Patrum, ut et Hereticorum, seculi post Christum natum i. ii. iii. &c.

PAGE 628.—West Bromwich.

PAGE 629.—On a blank leaf in a copy of Graffe's Lexicon Prosodiarum, Gottingen, 1811, and of Draco's Liber de Metris Poeticis, Lips. 1812.

PAGE 631.—Harrow on the Hill.

PAGE 632.—The original and intended inscription for the vase presented by the late Emperor of Russia to the Warden and Fellows of Merton College, Oxford.

PAGE 633.—This is inscribed on the same vase, and the variations from the preceding inscription were made without Dr. Parr's knowledge and consent.

PAGE 634.—On a pyramidal building erected over King Richard's Well in Bosworth Field.

PAGE 635.—This cup has been generously given back by Dr. John Johnstone to be preserved, with Dr. Parr's plate, in the family.

PAGE 636.—In Poleni Supplementa, 5 vols. folio, printed at Venice.

PAGE 637.—Leicester.

PAGE 638.—Dr. Parr presented this cup to his friend the Archdeacon Butler, by whom it has been generously returned to Dr. Parr's representatives.

PAGE 640.—In the south aisle of Westminster Abbey, between the monuments of Doctors Knipe and Stepney.

PAGE 644.—Rejected draft of an Inscription to Bp. Bennet.

PAGE 645.—This is the revised and adopted inscription.

PAGE 646.—On a silver basin in the possession of the Marquis of Cholmondeley.

PAGE 648.—This inscription, being found among Dr. Parr's papers, has been inserted by mistake. It was written by his friend and learned pupil Dr. Maltby.

PAGE 649.—In a book presented to Thomas Denman, Esq.

PAGE 650.

"Bibliotheca mea, uti nuper comperi, novies mille et octingenta volumina continet. Per id gratum mihi perque honorificum est, quod multi eorum dono mihi dati sunt a viris, quos ob ingenium aut doctrinam aut virtutem caros semper habui. At neutiquam me impetrare possum, ut dissimulem et tot libris ne unum quidem esse, qui æquè æstimari debeat, ac prima hæc Aristophanis editio, quam Samuelis Romilly benevolentiæ pia et grata mente acceptam refero. S. PARR."

This book is deposited by Dr. Parr's orders in the library of Emanuel College, Cambridge.

PAGE 651.—for ASSERVANDUM read ASSERVANDAM.

PAGE 652.—In a book presented to Henry Brougham, Esq.

PAGES 653—654—655.—Dedicatory inscriptions in Bellenden de Statu, to Burke, Fox, and Lord North.

PAGE 658.—At Norwich.

PAGE 659.—Birmingham, on a tablet of white marble, in the chapel of which Dr. Priestley was minister.

PAGE 660.—At Manchester.

PAGE 662.—In the chancel of Hatton Church.

PAGE 663.—Dr. Parr was not supplied with the date omitted.

PAGE 664.—At Worcester.

PAGE 668.—At Norwich.

PAGE 669.—In Hatton Chancel.

PAGE 670.—Dr. Parr's translation of his inscription over King Richard's well.

PAGE 671.—North side of Hatton Chancel.

PAGE 672.—In "Caroli Leonhardi Reinholdi Periculum, Novæ Theoriæ Facultatis Representativæ Humanæ," &c., Leip. 1797.

PAGE 673.—Intended to commemorate the virtues of the late Matthew Boulton, Esq. of Birmingham. For BOLTON read BOULTON.

PAGE 674.—In a volume of Latin poems, containing,—
"Musæ Regnantes," and
"Rex Platonicus."

PAGE 675.—Alcester Church, Warwickshire.

PAGE 676.—North side of Hatton Chancel.

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